
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 33. (See end of Document for details)

SCHEDULES

SCHEDULE 33

Section 209

INHERITANCE TAX: GIFTS TO CHARITIES ETC

Reduced rate of inheritance tax

1 After Schedule 1 to IHTA 1984 insert—

“SCHEDULE 1A

GIFTS TO CHARITIES ETC: TAX CHARGED AT LOWER RATE

Application of this Schedule

- 1 (1) This Schedule applies if—
- (a) a chargeable transfer is made (under section 4) on the death of a person (“D”), and
 - (b) all or part of the value transferred by the chargeable transfer is chargeable to tax at a rate other than nil per cent.
- (2) The part of the value transferred that is chargeable to tax at a rate other than nil per cent is referred to in this Schedule as “TP”.

The relief

- 2 (1) If the charitable giving condition is met—
- (a) the tax charged on the part of TP that qualifies for the lower rate of tax is to be charged at the lower rate of tax, and
 - (b) the tax charged on any remaining part of TP is to be charged at the rate at which it would (but for this Schedule) have been charged on the whole of TP in accordance with section 7.
- (2) For the purposes of this paragraph, the charitable giving condition is met if, for one or more components of the estate (taking each component separately), the donated amount is at least 10% of the baseline amount.
- (3) Paragraph 3 defines the components of the estate.
- (4) Paragraphs 4 and 5 explain how to calculate the donated amount and the baseline amount for each component.
- (5) The part of TP that “qualifies for the lower rate of tax” is the part attributable to all the property in each of the components for which the donated amount is at least 10% of the baseline amount.
- (6) The lower rate of tax is 36%.

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The components of the estate

- 3 (1) For the purposes of paragraph 2, the components of the estate are—
- (a) the survivorship component,
 - (b) the settled property component, and
 - (c) the general component.
- (2) The survivorship component is made up of all the property comprised in the estate that, immediately before D's death, was joint (or common) property liable to pass on D's death—
- (a) by survivorship (in England and Wales or Northern Ireland),
 - (b) under a special destination (in Scotland), or
 - (c) by or under anything corresponding to survivorship or a special destination under the law of a country or territory outside the United Kingdom.
- (3) The settled property component is made up of all the settled property comprised in the estate in which there subsisted, immediately before D's death, an interest in possession to which D was beneficially entitled immediately before death.
- (4) The general component is made up of all the property comprised in the estate other than—
- (a) property in the survivorship component,
 - (b) property in the settled property component, and
 - (c) property that forms part of the estate by virtue of section 102(3) of the Finance Act 1986 (gifts with reservation).

The donated amount

- 4 The donated amount, for a component of the estate, is so much of the value transferred by the relevant transfer as (in total) is attributable to property that—
- (a) forms part of that component, and
 - (b) is property in relation to which section 23(1) applies.

The baseline amount

- 5 The baseline amount, for a component of the estate, is the amount calculated in accordance with the following steps—

Step 1 Determine the part of the value transferred by the chargeable transfer that is attributable to property in that component.

Step 2 Deduct from the amount determined under Step 1 the appropriate proportion of the available nil-rate band.

“The appropriate proportion” is a proportion equal to the proportion that the amount determined under Step 1 bears to the value transferred by the chargeable transfer as a whole.

“The available nil-rate band” is the amount (if any) by which—

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- (a) the nil-rate band maximum (increased, where applicable, in accordance with section 8A), exceeds
- (b) the sum of the values transferred by previous chargeable transfers made by D in the period of 7 years ending with the date of the relevant transfer.

Step 3 Add to the amount determined under Step 2 an amount equal to so much of the value transferred by the relevant transfer as (in total) is attributable to property that—

- (a) forms part of that component, and
- (b) is property in relation to which section 23(1) applies.

The result is the baseline amount for that component.

Rules for determining whether charitable giving condition is met

- 6 (1) For the purpose of calculating the donated amount and the baseline amount, any amount to be arrived at in accordance with section 38(3) or (5) is to be arrived at assuming the rate of tax is the lower rate of tax (see paragraph 2(6)).
- (2) For the purpose of calculating the donated amount, section 39A does not apply to a specific gift of property in relation to which section 23(1) applies (but that section does apply to such a gift for the purpose of calculating the baseline amount).
- (3) Subject to sub-paragraphs (1) and (2), the provisions of this Act apply for the purpose of calculating the donated amount and the baseline amount as for the purpose of calculating the tax to be charged on the value transferred by the chargeable transfer.

Election to merge parts of the estate

- 7 (1) An election may be made under this paragraph if, for a component of the estate, the donated amount is at least 10% of the baseline amount.
- (2) That component is referred to as “the qualifying component”.
- (3) The effect of the election is that the qualifying component and one or more eligible parts of the estate (as specified in the election) are to be treated for the purposes of this Schedule as if they were a single component.
- (4) Accordingly, if the donated amount for that deemed single component is at least 10% of the baseline amount for it, the property in that component is to be included in the part of TP that qualifies for the lower rate of tax.
- (5) In relation to the qualifying component—
 - (a) each one of the other two components of the estate is an “eligible part” of the estate, and
 - (b) all the property that forms part of the estate by virtue of section 102(3) of the Finance Act 1986 (gifts with reservation) is also an “eligible part” of the estate.

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- (6) The election must be made by all those who are appropriate persons with respect to the qualifying component and each of the eligible parts to be treated as a single component.
- (7) “Appropriate persons” means—
- (a) with respect to the survivorship component, all those to whom the property in that component passes on D's death (or, if they have subsequently died, their personal representatives),
 - (b) with respect to the settled property component, the trustees of all the settled property in that component,
 - (c) with respect to the general component, all the personal representatives of D or, if there are none, all those who are liable for the tax attributable to the property in that component, and
 - (d) with respect to property within paragraph (b) of sub-paragraph (5), all those in whom the property within that paragraph is vested when the election is to be made.

Opting out

- 8 (1) If an election is made under this paragraph in relation to a component of the estate, this Schedule is to apply as if the donated amount for that component were less than 10% of the baseline amount for it (whether or not it actually is).
- (2) The election must be made by all those who are appropriate persons (as defined in paragraph 7(7)) with respect to the component.

Elections: procedure

- 9 (1) An election under this Schedule must be made by notice in writing to HMRC within two years after D's death.
- (2) An election under this Schedule may be withdrawn by notice in writing to HMRC given—
- (a) by all those who would be entitled to make such an election, and
 - (b) no later than the end of the period of two years and one month after D's death.
- (3) An officer of Revenue and Customs may agree in a particular case to extend the time limit in sub-paragraph (1) or (2)(b) by such period as the officer may allow.

General interpretation

- 10 In this Schedule, in relation to D—
- “the chargeable transfer” means the chargeable transfer mentioned in paragraph 1(1);
- “the estate” means D's estate immediately before death;
- “the relevant transfer” means the transfer of value that D is treated (under section 4) as having made immediately before death.”

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Consequential amendments

- 2 IHTA 1984 is amended as follows in consequence of paragraph 1.
- 3 In section 7 (rates), in subsection (1), after “(4) and (5) below” insert “ and to Schedule 1A ”.
- 4 In section 33 (amount of charge under section 32), after subsection (2) insert—
- “(2ZA) In determining for the purposes of subsection (1)(b)(ii) the rate or rates that would have applied in accordance with subsection (1) of section 7, the effect of Schedule 1A (if it would have applied) is to be disregarded.”
- 5 In section 78 (conditionally exempt occasion), in subsection (3), for “33(3)” substitute “ 33(2ZA) ”.
- 6 In section 128 (rate of charge: woodlands)—
- (a) the existing provisions become subsection (1) of that section, and
- (b) after that subsection insert—
- “(2) In determining for the purposes of subsection (1) the rate or rates at which tax would have been charged on the amount determined under section 127, the effect of Schedule 1A (if it would have applied) is to be disregarded.”
- 7 After section 141 insert—

“141A Apportionment of relief under section 141

- (1) This section applies if any part of the value transferred by the later transfer qualifies for the lower rate of tax in accordance with Schedule 1A.
- (2) The amount of the reduction made under section 141(1) is to be apportioned in accordance with this section.
- (3) For each qualifying component, the tax chargeable on so much of the value transferred by the later transfer as is attributable to property in that component (“the relevant part of the tax”) is to be reduced by the appropriate proportion of the amount calculated in accordance with section 141(3).
- (4) “The appropriate proportion” is a proportion equal to the proportion that—
- (a) the relevant part of the tax, bears to
- (b) the tax chargeable on the value transferred by the later transfer as a whole.
- (5) If parts of an estate are treated under Schedule 1A as a single component, subsection (3) applies to the single component (and not to individual components forming part of the deemed single component).
- (6) If, after making the reductions required by subsection (3), there remains any part of the tax chargeable on the value transferred by the later transfer that has not been reduced, the remaining part of the tax is to be reduced by so much of the amount calculated in accordance with section 141(3) as has not been used up for the purposes of making the reductions required by subsection (3).
- (7) In this section—
- “component” means a component of the estate, as defined in paragraph 3 of Schedule 1A;

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“the later transfer” has the meaning given in section 141(1);
“qualifying component” means a component (or deemed single component) for which the donated amount is at least 10% of the baseline amount, as determined in accordance with Schedule 1A.”

- 8 In Schedule 4 (maintenance funds for historic buildings etc), in paragraph 14, after sub-paragraph (2) insert—

“(2A) In determining for the purposes of sub-paragraph (2) the effective rate or rates at which tax would have been charged on the amount in accordance with section 7(1), the effect of Schedule 1A (if it would have applied) is to be disregarded.”

Instruments of variation to be notified to charities etc

- 9 In section 142 of IHTA 1984 (alteration of dispositions taking effect on death), after subsection (3) insert—

“(3A) Subsection (1) does not apply to a variation by virtue of which any property comprised in the estate immediately before the person's death becomes property in relation to which section 23(1) applies unless it is shown that the appropriate person has been notified of the existence of the instrument of variation.

- (3B) For the purposes of subsection (3A) “the appropriate person” is—
- (a) the charity or registered club to which the property is given, or
 - (b) if the property is to be held on trust for charitable purposes or for the purposes of registered clubs, the trustees in question.”

Commencement

- 10 (1) The Schedule inserted by paragraph 1 has effect in cases where D's death occurs on or after 6 April 2012 (and the amendments made by paragraphs 3 to 8 are to be read accordingly).
- (2) The amendment made by paragraph 9 has effect in cases where the person's death occurs on or after 6 April 2012.

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