

SCHEDULE 5

Section 35.

CONDITIONAL EXEMPTION: DEATHS BEFORE 7TH APRIL 1976

*Charge on failure of condition of exemption—objects*

- 1 (1) Where, under section 31 of the Finance Act 1975, the value of an object has been left out of account and the Treasury are satisfied that at any time the undertaking given under that section or under paragraph 5 below with respect to the object has not been observed in a material respect, tax shall be chargeable with respect to the object in accordance with paragraph 2 below.
- (2) Where, under section 31 of the Finance Act 1975, the value of any object has been left out of account and—
- (a) sub-paragraph (1) above does not apply, but
  - (b) the object is disposed of, whether on sale or otherwise,
- then, subject to the following provisions of this paragraph, tax shall be chargeable with respect to the object in accordance with paragraph 2 below ; but where the value of an object has been so left out of account on the death of more than one person, the tax chargeable under this sub-paragraph shall be chargeable only by reference to the last death.
- (3) Tax shall not be chargeable by virtue of sub-paragraph (2) above with respect to an object—
- (a) on its being sold by private treaty to a body mentioned in Schedule 3 to this Act or on its being disposed of to such a body otherwise than by sale, or
  - (b) if it is disposed of otherwise than by sale and the undertaking previously given with respect to it is replaced by a further undertaking under paragraph 5 below.
- (4) For the purposes of sub-paragraph (2) above, the acceptance of an object under section 230 of this Act shall not be treated as a disposal of the object.
- 2 (1) The following provisions of this paragraph shall have effect where, under section 31 of the Finance Act 1975, the value of any object has been left out of account in determining the value transferred by the transfer of value made on the death of any person (in this paragraph referred to as the value transferred on death) and tax becomes chargeable with respect to the object under paragraph 1 above by reason of the disposal of the object or the non-observance of an undertaking (in this paragraph referred to as a chargeable event).
- (2) The tax chargeable under paragraph 1 above with respect to an object shall be so much of the tax that would have been chargeable on the value transferred on death as would have been attributable to the value of the object if—
- (a) section 31 of the Finance Act 1975 had not applied to the object, and
  - (b) the value of the object at the time of the death had been equal to its value at the time of the chargeable event and, if the chargeable event was a disposal on sale complying with paragraph 6 below, that value had been equal to the proceeds of sale.
- (3) Where—
- (a) under section 31 of the Finance Act 1975 the value of two or more objects has been left out of account in determining the value transferred on death, and

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- (b) those objects formed a set at the time of the death, and
- (c) tax becomes chargeable under paragraph 1 above with respect to two or more of the objects by reason of chargeable events occurring at different times,

the preceding provisions of this paragraph shall apply as if both or all the chargeable events had occurred at the time of the earlier or earliest one, and the tax chargeable with respect to the objects shall be adjusted accordingly on the occurrence of each of the subsequent chargeable events.

- (4) Sub-paragraph (3) above shall not apply with respect to two or more chargeable events which are disposals to different persons who are neither acting in concert nor connected with each other.

*Charge on failure of condition of exemption—buildings etc.*

- 3 (1) Where, under subsection (2) of section 34 of the Finance Act 1975, the value of any property has been left out of account and the Treasury are satisfied that at any time the undertaking given under that subsection or under paragraph 5 below in respect of that property has not been observed in a material respect, then, subject to sub-paragraph (3) below, tax shall be chargeable in accordance with paragraph 4 below with respect to the property and any property associated with it.
- (2) Where, under section 34(2) of the Finance Act 1975, the value of any property has been left out of account in determining the value transferred on the death of any person and—
  - (a) sub-paragraph (1) above does not apply, but
  - (b) the property is disposed of, whether on sale or otherwise,
 then, subject to sub-paragraphs (3) and (4) below, tax shall be chargeable in accordance with paragraph 4 below with respect to the property and any property associated with it; but where the value of the property has been left out of account on the death of more than one person, the tax chargeable under this sub-paragraph shall be chargeable only by reference to the last death.
- (3) The Treasury may direct that the tax chargeable under this paragraph on a failure to observe an undertaking with respect to any property or on the disposal of any property shall be chargeable with respect only to that property, if it appears to them that the entity consisting of the building, land and objects concerned has not been materially affected.
- (4) Tax shall not be chargeable under sub-paragraph (2) above with respect to any property—
  - (a) on its being sold by private treaty to a body mentioned in Schedule 3 to this Act or on its being disposed of to such a body otherwise than by sale, or
  - (b) if it is disposed of otherwise than by sale and the undertaking previously given with respect to it is replaced by a further undertaking under paragraph 5 below ;
 and for the purposes of sub-paragraph (2) above the acceptance of any property under section 230 of this Act shall not be treated as a disposal of the property.
- (5) For the purposes of this paragraph, two or more properties are associated with each other if one of them is a building falling within subsection (1)(b) of section 34 of the Finance Act 1975 and the other or others such land or objects as, in relation to that building, fall within subsection (1)(c) or (d) of that section.

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- 4 The tax chargeable under paragraph 3 above with respect to any property shall be so much of the tax that would have been chargeable on the value transferred on the death as would have been attributable to the value of the property if—
- (a) section 34 of the Finance Act 1975 had not applied to the property; and
  - (b) the value of the property at the time of the death had been equal to its value at the time the tax becomes chargeable and, if it becomes chargeable on a sale complying with paragraph 6 below, that value had been equal to the proceeds of sale.

*Further undertaking on disposal*

- 5 (1) The further undertaking referred to in paragraph 1 above is an undertaking given, by such person as the Treasury think appropriate in the circumstances of the case, that, until the person entitled to the object dies or the object is disposed of, whether by sale or gift or otherwise,—
- (a) the object will be kept permanently in the United Kingdom and will not leave it temporarily except for a purpose and a period approved by the Treasury ; and
  - (b) reasonable steps will be taken for the preservation of the object; and
  - (c) reasonable facilities for examining the object for the purpose of seeing the steps taken for its preservation or, subject to sub-paragraph (3) below, for purposes of research, will be allowed to any person authorised by the Treasury to examine it.
- (2) The further undertaking referred to in paragraph 3 above is an undertaking given by such person as the Treasury think appropriate in the circumstances of the case that, until the person entitled to the property dies or the property is disposed of, whether by sale or gift or otherwise, reasonable steps will be taken—
- (a) in the case of land falling within subsection (1)(a) of section 34 of the Finance Act 1975, for the maintenance of the land and the preservation of its character, and
  - (b) in the case of any other property, for the maintenance, repair and preservation of the property and, if it is an object falling within subsection (1)(d) of that section, for keeping it associated with the building concerned,
- and for securing reasonable access to the public.
- (3) If it appears to the Treasury, on a claim made for the purpose, that any documents which are designated as objects to which section 31 of the Finance Act 1975 applies contain information which for personal or other reasons ought to be treated as confidential, they may exclude those documents, either entirely or to such extent as they think fit, from so much of an undertaking given or to be given under sub-paragraph (1)(c) above as relates to their examination for purposes of research.

*Requirements of sale*

- 6 A sale complies with this paragraph if—
- (a) it was not intended to confer any gratuitous benefit on any person, and
  - (b) it was either a transaction at arm's length between persons not connected with each other or a transaction such as might be expected to be made at arm's length between persons not connected with each other.