



# Inheritance Tax Act 1984

## 1984 CHAPTER 51

### PART II

#### EXEMPT TRANSFERS

#### CHAPTER I

#### GENERAL

### 18 Transfers between spouses [<sup>F1</sup>or civil partners].

- (1) A transfer of value is an exempt transfer to the extent that the value transferred is attributable to property which becomes comprised in the estate of the transferor's spouse [<sup>F2</sup>or civil partner] or, so far as the value transferred is not so attributable, to the extent that that estate is increased.
- (2) If, immediately before the transfer, the transferor but not the transferor's spouse [<sup>F3</sup>or civil partner] is domiciled in the United Kingdom the value in respect of which the transfer is exempt (calculated as a value on which no tax is chargeable) shall not exceed £55,000 less any amount previously taken into account for the purposes of the exemption conferred by this section.
- (3) Subsection (1) above shall not apply in relation to property if the testamentary or other disposition by which it is given—
  - (a) takes effect on the termination after the transfer of value of any interest or period, or
  - (b) depends on a condition which is not satisfied within twelve months after the transfer;

but paragraph (a) above shall not have effect by reason only that the property is given to a spouse [<sup>F4</sup>or civil partner] only if he survives the other spouse [<sup>F4</sup>or civil partner] for a specified period.

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- (4) For the purposes of this section, property is given to a person if it becomes his property or is held on trust for him.

#### **Textual Amendments**

- F1** Words in s. 18 sidenote inserted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **7(5)**
- F2** Words in s. 18(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), **reg. 7(2)**
- F3** Words in s. 18(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **7(3)**
- F4** Words in s. 18(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **7(4)**

## **19 Annual exemption.**

- (1) Transfers of value made by a transferor in any one year are exempt to the extent that the values transferred by them (calculated as values on which no tax is chargeable) do not exceed £3,000.
- (2) Where those values fall short of £3,000, the amount by which they fall short shall, in relation to the next following year, be added to the £3,000 mentioned in subsection (1) above.
- (3) Where those values exceed £3,000, the excess—
- (a) shall, as between transfers made on different days, be attributed so far as possible to a later rather than an earlier transfer, and
  - (b) shall, as between transfers made on the same day, be attributed to them in proportion to the values transferred by them.
- [<sup>F5</sup>(3A) A transfer of value which is a potentially exempt transfer—
- (a) shall in the first instance be left out of account for the purposes of subsections (1) to (3) above; and
  - (b) if it proves to be a chargeable transfer, shall for the purposes of those subsections be taken into account as if, in the year in which it was made, it was made later than any transfer of value which was not a potentially exempt transfer.]
- (4) In this section “year” means period of twelve months ending with 5th April.
- (5) Section 3(4) above shall not apply for the purposes of this section (but without prejudice to sections 57 and 94(5) below).

#### **Textual Amendments**

- F5** Finance Act 1986 Sch. 19, para. 5, *in relation to transfers of value made on or after 18 March 1986.*

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## 20 Small gifts.

- (1) Transfers of value made by a transferor in any one year by outright gifts to any one person are exempt if the values transferred by them (calculated as values on which no tax is chargeable) do not exceed £250.
- (2) In this section “year” means period of twelve months ending with 5th April.
- (3) Section 3(4) above shall not apply for the purposes of this section.

## 21 Normal expenditure out of income.

- (1) A transfer of value is an exempt transfer if, or to the extent that, it is shown—
  - (a) that it was made as part of the normal expenditure of the transferor, and
  - (b) that (taking one year with another) it was made out of his income, and
  - (c) that, after allowing for all transfers of value forming part of his normal expenditure, the transferor was left with sufficient income to maintain his usual standard of living.
- (2) A payment of a premium on a policy of insurance on the transferor’s life, or a gift of money or money’s worth applied, directly or indirectly, in payment of such a premium, shall not for the purposes of this section be regarded as part of his normal expenditure if, when the insurance was made or at any earlier or later time, an annuity was purchased on his life, unless it is shown that—
  - (a) the purchase of the annuity, and
  - (b) the making or any variation of the insurance or of any prior insurance for which the first-mentioned insurance was directly or indirectly substituted, were not associated operations.
- (3) So much of a purchased life annuity (within the meaning of [F6]section 423 of the Income Tax (Trading and Other Income) Act 2005] as is, [F7]exempt from income tax under section 717 of that Act] , shall not be regarded as part of the transferor’s income for the purposes of this section.
- (4) Subsection (3) above shall not apply to annuities purchased before 13th November 1974.
- (5) Section 3(4) above shall not apply for the purposes of this section.

### Textual Amendments

- F6** Words in s. 21(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), ss. 882, 883, [Sch. 1 para. 395\(a\)](#) (with [Sch. 2](#))
- F7** Words in s. 21(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), ss. 882, 883, [Sch. 1 para. 395\(b\)](#) (with [Sch. 2](#))

## 22 Gifts in consideration of marriage [F8 or civil partnership].

- (1) Transfers of value made by gifts in consideration of marriage [F9 or civil partnership] are exempt to the extent that the values transferred by such transfers made by any one

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transferor in respect of any one marriage [<sup>F9</sup>or civil partnership](calculated as values on which no tax is chargeable) do not exceed—

- (a) in the case of gifts within subsection (2) below by a parent of a party to the marriage [<sup>F9</sup>or civil partnership] , £5,000,
- (b) in the case of other gifts within subsection (2) below, £2,500, and
- (c) in any other case £1,000;

any excess being attributed to the transfers in proportion to the values transferred.

(2) A gift is within this subsection if—

- (a) it is an outright gift to a child or remoter descendant of the transferor or
- (b) the transferor is a parent or remoter ancestor of either party to the marriage [<sup>F10</sup>or civil partnership] , and either the gift is an outright gift to the other party to the marriage [<sup>F10</sup>or civil partnership] or the property comprised in the gift is settled by the gift, or
- (c) the transferor is a party to the marriage [<sup>F10</sup>or civil partnership] , and either the gift is an outright gift to the other party to the marriage [<sup>F10</sup>or civil partnership] or the property comprised in the gift is settled by the gift;

and in this section “child” includes an illegitimate child, an adopted child and a step-child and “parent”, “descendant” and “ancestor” shall be construed accordingly.

(3) A disposition which is an outright gift shall not be treated for the purposes of this section as a gift made in consideration of marriage [<sup>F11</sup>or civil partnership] if, or in so far as, it is a gift to a person other than a party to the marriage [<sup>F11</sup>or civil partnership] .

(4) A disposition which is not an outright gift shall not be treated for the purposes of this section as a gift made in consideration of marriage [<sup>F12</sup>or civil partnership] if the persons who are or may become entitled to any benefit under the disposition include any person other than—

- [<sup>F13</sup>(a) the parties to the marriage or civil partnership, any child of the family of the parties to the marriage or civil partnership, or a spouse or civil partner of any such child;]
- (b) persons becoming entitled on the failure of trusts for any such [<sup>F14</sup>child] under which trust property would (subject only to any power of appointment to a person falling within paragraph (a) or (c) of this subsection) vest indefeasibly on the attainment of a specified age or either on the attainment of such an age or on some earlier event, or persons becoming entitled (subject as aforesaid) on the failure of any limitation in tail;
- [<sup>F15</sup>(c) a subsequent spouse or civil partner of a party to the marriage or civil partnership, any child of the family of the parties to any such subsequent marriage or civil partnership, or a spouse or civil partner of any such child;]
- (d) persons becoming entitled under such trusts, subsisting under the law of England and Wales or of Northern Ireland, as are specified in section 33(1) of the <sup>M1</sup>Trustee Act 1925 or section 34(1) of the <sup>M2</sup>Trustee Act (Northern Ireland) 1958 (protective trusts), the principal beneficiary being a person falling within paragraph (a) or (c) of this subsection, or under such trusts, modified by the enlargement, as respects any period during which there is no such [<sup>F16</sup>child] as aforesaid in existence, of the class of potential beneficiaries specified in paragraph (ii) of the said section 33(1) or paragraph (b) of the said section 34(1);
- (e) persons becoming entitled under trusts subsisting under the law of Scotland and corresponding with such trusts as are mentioned in paragraph (d) above;

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(f) as respects a reasonable amount of remuneration, the trustees of the settlement.

[<sup>F17</sup>(4A) In subsection (4) “child of the family”, in relation to parties to a marriage or civil partnership, means a child of one or both of them.]

(5) <sup>F18</sup> . . . . .

(6) Section 3(4) above shall not apply for the purposes of this section (but without prejudice to section 57 below).

**Textual Amendments**

- F8** Words in s. 22 sidenote inserted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(8)**
- F9** Words in s. 22(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(2)**
- F10** Words in s. 22(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(3)**
- F11** Words in s. 22(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(4)**
- F12** Words in s. 22(4) inserted (5.12.2005 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(5)(a)**
- F13** S. 22(4)(a) substituted (5.12.2005 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(5)(b)**
- F14** Word in s. 22(4)(b) substituted (5.12.2005 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(5)(c)**
- F15** S. 22(4)(c) substituted (5.12.2005 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(5)(d)**
- F16** Word in s. 22(4)(d) substituted (5.12.2005 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(5)(e)**
- F17** S. 22(4A) inserted (5.12.2005 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(6)**
- F18** S. 22(5) omitted (5.12.2005 with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **8(7)**

**Marginal Citations**

- M1** 1925 c. 19.
- M2** 1958 c. 23 (N.I.).

**23 Gifts to charities.**

- (1) Transfers of value are exempt to the extent that the values transferred by them are attributable to property which is given to charities.
- (2) Subsection (1) above shall not apply in relation to property if the testamentary or other disposition by which it is given—
  - (a) takes effect on the termination after the transfer of value of any interest or period, or
  - (b) depends on a condition which is not satisfied within twelve months after the transfer, or
  - (c) is defeasible;

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and for this purpose any disposition which has not been defeated at a time twelve months after the transfer of value and is not defeasible after that time shall be treated as not being defeasible (whether or not it was capable of being defeated before that time).

(3) Subsection (1) above shall not apply in relation to property which is an interest in other property if—

- (a) that interest is less than the donor's, or
- (b) the property is given for a limited period;

and for this purpose any question whether an interest is less than the donor's shall be decided as at a time twelve months after the transfer of value.

(4) Subsection (1) above shall not apply in relation to any property if—

- (a) the property is land or a building and is given subject to an interest reserved or created by the donor which entitled him, his spouse [<sup>F19</sup>or civil partner] or a person connected with him to possession of, or to occupy, the whole or any part of the land or building rent-free or at a rent less than might be expected to be obtained in a transaction at arm's length between persons not connected with each other, or
- (b) the property is not land or a building and is given subject to an interest reserved or created by the donor other than—

- (i) an interest created by him for full consideration in money or money's worth, or

- (ii) an interest which does not substantially affect the enjoyment of the property by the person or body to whom it is given;

and for this purpose any question whether property is given subject to an interest shall be decided as at a time twelve months after the transfer of value.

(5) Subsection (1) above shall not apply in relation to property if it or any part of it may become applicable for purposes other than charitable purposes or those of a body mentioned in section 24, [<sup>F20</sup>or 25] below [<sup>F21</sup>or, where it is land, of a body mentioned in section 24A below].

(6) For the purposes of this section property is given to charities if it becomes the property of charities or is held on trust for charitable purposes only, and “donor” shall be construed accordingly.

#### **Textual Amendments**

**F19** Words in s. 23(4)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **9**

**F20** Words in s. 23(5) substituted (31.7.1998 with effect in relation to any transfer of value made on or after 17.3.1998) by [1998 c. 36, s. 143\(2\)\(a\)](#)

**F21** Finance Act 1989 s. 171(2), *in relation to transfers of value made on or after 14 March 1989*.

#### **Modifications etc. (not altering text)**

**C1** [S. 23](#) modified (24.7.2002 with effect as mentioned in [s. 58\(4\)](#) of the amending Act) by [2002 c. 23, s. 58, Sch. 18 Pt. 3, para. 9\(2\)](#)

## **24 Gifts to political parties.**

(1) Transfers of value are exempt to the extent that the values transferred by them—

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- (a) are attributable to property which becomes the property of a political party qualifying for exemption under this section; . . . <sup>F22</sup>
  - (b) . . . . . <sup>F22</sup>
- (2) A political party qualifies for exemption under this section if, at the last general election preceding the transfer of value,—
- (a) two members of that party were elected to the House of Commons, or
  - (b) one member of that party was elected to the House of Commons and not less than 150,000 votes were given to candidates who were members of that party.
- (3) Subsections (2) to (5) of section 23 above shall apply in relation to subsection (1) above as they apply in relation to section 23(1).
- (4) For the purposes of section 23(2) to (5) as they apply by virtue of subsection (3) above property is given to any person or body if it becomes the property of or is held on trust for that person or body, and “donor” shall be construed accordingly.

**Textual Amendments**

**F22** *Repealed by Finance Act 1988 s. 137 and Sch. 14, Part X in relation to transfers of value made on or after 15 March 1988.*

**Modifications etc. (not altering text)**

**C2** *S. 24 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the applying Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 264(8), 289 (with ss. 60, 101(1), 201(3)).*

**[<sup>F23</sup>24A Gifts to housing associations.**

- (1) A transfer of value is exempt to the extent that the value transferred by it is attributable to land in the United Kingdom given to a [<sup>F24</sup>body falling within subsection (2) below].
- [ A body falls within this subsection if it is—
- <sup>F25</sup>(2) (a) a registered social landlord within the meaning of Part I of the Housing Act 1996;
  - (b) a registered housing association within the meaning of the Housing Associations Act 1985; or
  - (c) a registered housing association within the meaning of Part II of the Housing (Northern Ireland) Order 1992..]
- (3) Subsections (2) to (5) of section 23 and subsection (4) of section 24 above shall apply in relation to subsection (1) above as they apply in relation to section 24(1).]

**Textual Amendments**

**F23** *Finance Act 1989 s. 171(1), with effect from 14 March 1989.*

**F24** *Words in s. 24A(1) substituted (1.10.1996) by S.I. 1996/2325, art. 5(1), Sch. 2 para. 12(2)*

**F25** *S. 24A(2) substituted (1.10.1996) by S.I. 1996/2325, art. 5(1), Sch. 2 para. 12(3)*

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## 25 Gifts for national purposes, etc.

- (1) A transfer of value is an exempt transfer to the extent that the value transferred by it is attributable to property which becomes the property of a body within Schedule 3 to this Act.
- (2) Subsections (2) to (5) of section 23 and subsection (4) of section 24 above shall apply in relation to subsection (1) above as they apply in relation to section 24(1), except that section 23(3) shall not prevent subsection (1) above from applying in relation to property consisting of the benefit of an agreement restricting the use of land.

<sup>F26</sup>26 .....

### Textual Amendments

**F26** S. 26 repealed (31.7.1998 with effect as mentioned in s. 143(1) of the amending Act) by 1998 c. 36, ss. 143(1), 165(1), Sch. 27 Pt. IV, note 1

## [<sup>F27</sup>26A Potentially exempt transfer of property subsequently held for national purposes etc.

A potentially exempt transfer which would (apart from this section) have proved to be a chargeable transfer shall be an exempt transfer to the extent that the value transferred by it is attributable to property which has been or could be designated under section 31(1) below and which, during the period beginning with the date of the transfer and ending with the death of the transferor,—

- (a) has been disposed of by sale by private treaty to a body mentioned in Schedule 3 to this Act or has been disposed of to such a body otherwise than by sale, or
- (b) has been disposed of in pursuance of section 230 below.]

### Textual Amendments

**F27** Finance Act 1986 Sch. 19, para. 6, *in relation to transfers of value made on or after 18 March 1986.*

## 27 Maintenance funds for historic buildings, etc.

- (1) [<sup>F28</sup>Subject to subsection (1A) below,] a transfer of value is an exempt transfer to the extent that the value transferred by it is attributable to property which by virtue of the transfer becomes comprised in a settlement and in respect of which—
  - (a) a direction under paragraph 1 of Schedule 4 to this Act has effect at the time of the transfer, or
  - (b) such a direction is given after the time of the transfer.

[<sup>F29</sup>(1A) Subsection (1) above does not apply in the case of a direction given after the time of the transfer unless the claim for the direction (if it is not made before that time) is made no more than two years after the date of that transfer, or within such longer period as the Board may allow.]



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- (2) Subsections (2) and (3) of the section 23 and subsection (4) of section 24 above shall apply in relation to subsection (1) above as they apply in relation to section 24(1).

#### Textual Amendments

- F28** Words in s. 27(1) inserted (31.7.1998 with effect in relation to transfers of value made on or after 17.3.1998) by 1998 c. 36, s. 144(1)(2)
- F29** S. 27(1A) inserted (31.7.1998 with effect in relation to transfers of value made on or after 17.3.1998) by 1998 c. 36, s. 144(1)(2)

## 28 Employee trusts.

- (1) A transfer of value made by an individual who is beneficially entitled to shares in a company is an exempt transfer to the extent that the value transferred is attributable to shares in or securities of the company which become comprised in a settlement if—
- the trusts of the settlement are of the description specified in section 86(1) below, and
  - the persons for whose benefit the trusts permit the settled property to be applied include all or most of the persons employed by or holding office with the company.
- (2) Subsection (1) above shall not apply unless at the date of the transfer, or at a subsequent date not more than one year thereafter, both the following conditions are satisfied, that is to say—
- the trustees—
    - hold more than one half of the ordinary shares in the company, and
    - have powers of voting on all questions affecting the company as a whole which if exercised would yield a majority of the votes capable of being exercised on them; and
  - there are no provisions in any agreement or instrument affecting the company's constitution or management or its shares or securities whereby the condition in paragraph (a) above can cease to be satisfied without the consent of the trustees.
- (3) Where the company has shares or securities of any class giving powers of voting limited to either or both of the following—
- the question of winding up the company, and
  - any question primarily affecting shares or securities of that class,
- the reference in subsection (2)(a)(ii) above to all questions affecting the company as a whole shall be read as a reference to all such questions except any in relation to which those powers are capable of being exercised.
- (4) Subsection (1) above shall not apply if the trusts permit any of the settled property to be applied at any time (whether during any such period as is referred to in section 86(1) below or later) for the benefit of—
- a person who is a participator in the company mentioned in subsection (1) above; or
  - any other person who is a participator in any close company that has made a disposition whereby property became comprised in the same settlement, being

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- a disposition which but for section 13 above would have been a transfer of value; or
- (c) any other person who has been a participator in the company mentioned in subsection (1) above or in any such company as is mentioned in paragraph (b) above at any time after, or during the ten years before, the transfer of value mentioned in subsection (1) above; or
- (d) any person who is connected with any person within paragraph (a), (b) or (c) above.
- (5) The participators in a company who are referred to in subsection (4) above do not include any participator who—
- (a) is not beneficially entitled to, or to rights entitling him to acquire, 5 per cent. or more of, or of any class of the shares comprised in, its issued share capital, and
- (b) on a winding-up of the company would not be entitled to 5 per cent. or more of its assets.
- (6) In determining whether the trusts permit property to be applied as mentioned in subsection (4) above, no account shall be taken of any power to make a payment which is the income of any person for any of the purposes of income tax, or would be the income for any of those purposes of a person not resident in the United Kingdom if he were so resident.
- (7) Subsection (5) of section 13 above shall have effect in relation to this section as it has effect in relation to that section.

## **29 Loans—modifications of exemptions.**

- (1) If or to the extent that a transfer of value is a disposition whereby the use of money or other property is allowed by one person to another (“the borrower”), the preceding provisions of this Chapter shall apply to it with the following modification.
- (2) For the purposes of section 18 the borrower’s estate shall be treated as increased by an amount equal to the value transferred; and section 18(3) shall not apply.
- (3) For the purposes of sections 20 and 22 the transfer of value shall be treated as made by outright gift.
- (4) Section 21(1) shall apply as if for the conditions stated in paragraphs (a) and (b) there were substituted the condition that the transfer was a normal one on the part of the transferor.
- (5) For the purposes of sections 23 [F30 to 25]—
- (a) the value transferred shall be treated as attributable to the property of which the borrower is allowed the use, and
- (b) that property shall be treated as given to, or as becoming the property of, the borrower unless the use allowed includes use for purposes other than charitable purposes or those of a body mentioned in section 24, [F30 or 25] [F31 or where it is land, of a body mentioned in section 24A]
- and sections 23(2) to (6), 24 . . . F32, (3) and (4), [F31 24A(3)] [F30 and 25(2)] shall not apply.

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### Textual Amendments

- F30** Words in s. 29(5) substituted (31.7.1998 with effect in relation to any transfer of value made on or after 17.3.1998) by 1998 c. 36, s. 143(2)(b)
- F31** Finance Act 1989 s. 171(3), in relation to transfers of value made on or after 14 March 1989.
- F32** “(1)(b)”  
repealed by Finance Act 1988 s. 148 and Sch. 14, Part X, with effect from 15 March 1988.

### [<sup>F33</sup>29A Abatement of exemption where claim settled out of beneficiary’s own resources.

- (1) This section applies where—
- (a) apart from this section the transfer of value made on the death of any person is an exempt transfer to the extent that the value transferred by it is attributable to an exempt gift, and
  - (b) the exempt beneficiary, in settlement of the whole or part of any claim against the deceased’s estate, effects a disposition of property not derived from the transfer.
- (2) The provisions of this Act shall have effect in relation to the transfer as if—
- (a) so much of the relevant value as is equal to the following amount, namely the amount by which the value of the exempt beneficiary’s estate immediately after the disposition is less than it would be but for the disposition, or
  - (b) where that amount exceeds the relevant value, the whole of the relevant value, were attributable to such a gift to the exempt beneficiary as is mentioned in subsection (3) below (instead of being attributable to a gift with respect to which the transfer is exempt).
- (3) The gift referred to in subsection (2) above is a specific gift with respect to which the transfer is chargeable, being a gift which satisfies the conditions set out in paragraphs (a) and (b) of section 38(1) below.
- (4) In determining the value of the exempt beneficiary’s estate for the purposes of subsection (2) above—
- (a) no deduction shall be made in respect of the claim referred to in subsection (1)(b) above, and
  - (b) where the disposition referred to in that provision constitutes a transfer of value—
    - (i) no account shall be taken of any liability of the beneficiary for any tax on the value transferred, and
    - (ii) sections 104 and 116 below shall be disregarded.
- (5) Subsection (1)(b) above does not apply in relation to any claim against the deceased’s estate in respect of so much of any liability as is, in accordance with this Act, to be taken into account in determining the value of the estate.
- (6) In this section—
- “exempt gift”, in relation to a transfer of value falling within subsection (1)(a) above, means—
- (a) a gift with respect to which the transfer is (apart from this section) exempt by virtue of the provisions of any sections 18 and 23 to 28 above, or

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- (b) where (apart from this section) the transfer is so exempt with respect to a gift up to a limit, so much of the gift as is within that limit;
- “the exempt beneficiary”, in relation to an exempt gift, means any of the following, namely—
- (a) where the gift is exempt by virtue of section 18 above, the deceased’s spouse [<sup>F34</sup>or civil partner] ,
- (b) where the gift is exempt by virtue of section 23 above, any person or body—
- (i) whose property the property falling within subsection (1) of that section becomes, or
- (ii) by whom that property is held on trust for charitable purposes,
- (c) where the gift is exempt by virtue of section 24, [<sup>F35</sup>or 25] above, any body whose property the property falling within subsection (1) of that section becomes,
- (d) where the gift is exempt by virtue of section 24A above, any body to whom the land falling within subsection (1) of that section is given, and
- (e) where the gift is exempt by virtue of section 27 or 28 above, the trustees of any settlement in which the property falling within subsection (1) of that section becomes comprised;
- “gift” and “specific gift” have the same meaning as in Chapter III of this Part; and
- “the relevant value”, in relation to a transfer of value falling within subsection (1)(a) above, means so much of the value transferred by the transfer as is attributable to the gift referred to in that provision.]

#### **Textual Amendments**

- F33** Finance Act 1989 s. 172(1), *in relation to deaths occurring on or after 27 July 1989.*
- F34** S. 29A(6): words in the definition of “the exempt beneficiary” inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **10**
- F35** S. 29A(6): words in the definition of “the exempt beneficiary” substituted (31.7.1998 with effect in relation to any transfer of value made on or after 17.3.1998) by [1998 c. 36, s. 143\(2\)\(a\)](#)

## **CHAPTER II**

### **CONDITIONAL EXEMPTION**

#### **30 Conditionally exempt transfers.**

- (1) A transfer of value is an exempt transfer to the extent that the value transferred by it is attributable to property—
- (a) which, on a claim made for the purpose, is designated by the Treasury under section 31 below, and
- (b) with respect to which the requisite undertaking described in that section is given by such person as the Treasury think appropriate in the circumstances of the case [<sup>F36</sup>or (where the property is an area of land within subsection (1)(d) of that section) with respect to which the requisite undertakings described in that section are given by such person or persons as the Treasury think appropriate in the circumstances of the case.]

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- (2) A transfer of value exempt with respect to any property under this section or under section 76 of the <sup>M3</sup>Finance Act 1976 is referred to in this Act as a conditionally exempt transfer of that property.
- (3) Subsection (1) above shall not apply to a transfer of value other than one which under section 4 above a person makes on his death unless—
- (a) the transferor or his spouse [<sup>F37</sup>or civil partner] , or the transferor and his spouse [<sup>F37</sup>or civil partner] between them, have been beneficially entitled to the property throughout the six years ending with the transfer, or
  - (b) the transferor acquired the property on a death on the occasion of which there was a transfer of value under section 4 above which was itself a conditionally exempt transfer of the property.
- [<sup>F38</sup>(3A) The provisions of this section shall be disregarded in determining under section 3A above whether a transfer of value is a potentially exempt transfer.
- (3B) No claim may be made under subsection (1) above with respect to a potentially exempt transfer until the transferor has died.
- [ A claim under subsection (1) above must be made no more than two years after the <sup>F39</sup>(3BA) date of the transfer of value to which it relates or, in the case of a claim with respect to a potentially exempt transfer, the date of the death, or (in either case) within such longer period as the Board may allow.]
- (3C) Subsection (1) above shall not apply to a potentially exempt transfer to the extent that the value transferred by it is attributable to property which has been disposed of by sale during the period beginning with the date of the transfer and ending with the death of the transferor.]
- (4) Subsection (1) above does not apply to a transfer of value to the extent to which it is an exempt transfer under section 18 or 23 above.

#### Textual Amendments

- F36** Finance Act 1985 Sch. 26, para. 1, *in relation to events occurring after 18 March 1985.*
- F37** Words in s. 30(3)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **11**
- F38** Finance Act 1986 Sch. 19, para. 7, *in relation to transfers of value made on or after 18 March 1986.*
- F39** [S. 30\(3BA\)](#) inserted (31.7.1998 with effect in relation to any transfer of value or death on or after 17.3.1998) by [1998 c. 36, s. 142](#), [Sch. 25 para. 2\(1\)\(2\)](#)

#### Modifications etc. (not altering text)

- C3** By Finance Act 1985 s. 95, *the functions of the Treasury were transferred to the Commissioners of Inland Revenue (“the Board”).*

#### Marginal Citations

- M3** [1976 c. 40](#).

## 31 Designation and undertakings.

- (1) The Treasury may designate under this section—
- [<sup>F40</sup>(a) any relevant object which appears to the Board to be pre-eminent for its national, scientific, historic or artistic interest;

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- (aa) any collection or group of relevant objects which, taken as a whole, appears to the Board to be pre-eminent for its national, scientific, historic or artistic interest;]
  - (b) any land which in the opinion of the Treasury is of outstanding scenic or historic or scientific interest;
  - (c) any building for the preservation of which special steps should in the opinion of the Treasury be taken by reason of its outstanding historic or architectural interest;
  - [<sup>F41</sup>(d) any area of land which in the opinion of the Treasury is essential for the protection of the character and amenities of such a building as is mentioned in paragraph (c) above;]
  - (e) any object which in the opinion of the Treasury is historically associated with such a building as is mentioned in paragraph (c) above.
- [<sup>F42</sup>(1A) Where the transfer of value in relation to which the claim for designation is made is a potentially exempt transfer which (apart from section 30 above) has proved to be a chargeable transfer, the question whether any property is appropriate for designation under this section shall be determined by reference to circumstances existing after the death of the transferor.]
- (2) In the case of property within subsection [<sup>F43</sup>(1)(a)or(aa)] above, the requisite undertaking is that, until the person beneficially entitled to the property dies or the property is disposed of, whether by sale or gift or otherwise—
- (a) the property 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) [<sup>F44</sup>such steps as are agreed between the Treasury and the person giving the undertaking, and are set out in it,] will be taken for the preservation of the property 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 or to be designated under subsection [<sup>F43</sup>(1)(a) or (aa)] above contain information which for personal or other reasons ought to be treated as confidential, they may exclude those documents, either altogether or to such extent as they think fit, from so much of an undertaking given or to be given under subsection (2) (b) above as relates to public access.
- (4) In the case of other property within subsection (1) above, the requisite undertaking is that, until the person beneficially entitled to the property dies or the property is disposed of, whether by sale or gift or otherwise, [<sup>F45</sup>such steps as are agreed between the Treasury and the person giving the undertaking, and are set out in it,] will be taken—
- (a) in the case of land falling within subsection (1)(b) above, 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)(e) above, for keeping it associated with the building concerned;
- and for securing reasonable access to the public.
- [<sup>F46</sup>(4A) In the case of an area of land within subsection (1)(d) above (relevant land) there is an additional requisite undertaking, which is that, until the person beneficially entitled to property falling within subsection (4C) below dies, or it is disposed of, whether by sale or gift or otherwise, specified steps will be taken for its maintenance, repair

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and preservation and for securing reasonable access to the public; and “specified steps” means such steps as are agreed between the Treasury and the person giving the undertaking, and are set out in it.

(4B) Where different persons are entitled (either beneficially or otherwise) to different properties falling within subsection (4C) below, subsection (4A) above shall have effect to require separate undertakings as to the maintenance, repair, preservation and access of each of the properties to be given by such persons as the Treasury think appropriate in the circumstances of the case.

(4C) The following property falls within this subsection—

- (a) the building for the protection of whose character and amenities the relevant land is in the opinion of the Treasury essential;
- (b) any other area (or areas) of land which, in relation to the building, falls (or fall) within subsection (1)(d) above and which either lies (or lie) between the relevant land and the building or is (or are) in the opinion of the Treasury, physically closely connected with the relevant land or the building.

(4D) Where subsection (4A) above requires an undertaking for the maintenance, repair, preservation and access of property, such an undertaking is required notwithstanding that some other undertaking for its maintenance, repair, preservation and access is effective.

(4E) Any undertaking given in pursuance of subsection (4A) above is for the purposes of this Act given with respect to the relevant land.

(4F) It is for the person seeking the designation of relevant land to secure that any undertaking required under subsection (4A) above is given.]

[<sup>F47</sup>(4FA) For the purposes of this section, the steps agreed for securing reasonable access to the public must ensure that the access that is secured is not confined to access only where a prior appointment has been made.]

[<sup>F48</sup>(4FB) Subject to subsection (3) above, where the steps that may be set out in any undertaking include steps for securing reasonable access to the public to any property, the steps that may be agreed and set out in that undertaking may also include steps involving the publication of—

- (a) the terms of any undertaking given or to be given for any of the purposes of this Act with respect to the property; or
- (b) any other information relating to the property which (apart from this subsection) would fall to be treated as confidential;

and references in this Act to an undertaking for access to any property shall be construed as including references to so much of any undertaking as provides for the taking of steps involving any such publication.]

[<sup>F49</sup>(4G) In a case where—

- (a) the transfer of value in question is a potentially exempt transfer which (apart from section 30 above) has proved to be a chargeable transfer, and
- (b) at the time of the transferor’s death an undertaking by such a person as is mentioned in section 30(1)(b) above given under paragraph 3(3) of Schedule 4 to this Act or under section [<sup>F50</sup>258 of the 1992 Act] is in force with respect to any property to which the value transferred by the transfer is attributable,

that undertaking shall be treated for the purposes of this Chapter as an undertaking given under section 30 above.]

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[<sup>F51</sup>(5) In this section—

‘national interest’ includes interest within any part of the United Kingdom; and

‘relevant object’ means—

- (a) a picture, print, book, manuscript, work of art or scientific object, or
- (b) anything not falling within paragraph (a) above that does not yield income;

and in determining under subsection (1)(a) or (aa) above whether an object or a collection or group of objects is pre-eminent, regard shall be had to any significant association of the object, collection or group with a particular place.]

#### Textual Amendments

- F40** S. 31(1)(a)(aa) substituted for s. 31(1)(a) (31.7.1998 with effect in relation to the making of any designation on a claim made on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 4(1)(4)**
- F41** Finance Act 1985 Sch. 26, para. 2(2), *in relation to events occurring after 18 March 1985. Originally* “any land which adjoins such a building as is mentioned in paragraph (c) above and which in the opinion of the Treasury is essential for the protection of the character and amenities of the building.”
- F42** Finance Act 1986 Sch. 19, para. 8(1), *in relation to transfers of value made on or after 18 March 1986.*
- F43** Words in s. 31(2)(3) substituted (31.7.1998 with effect in relation to the making of any designation on a claim made on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 4(2)(4)**
- F44** Finance Act 1985 Sch. 26, para. 2(3), *in relation to events occurring after 18 March 1985. Originally* “reasonable steps”.
- F45** Finance Act 1985 Sch. 26, para. 2(3), *in relation to events occurring after 18 March 1985. Originally* “reasonable steps”.
- F46** Finance Act 1985 Sch. 26, para. 2(4), *in relation to events occurring after 18 March 1985.*
- F47** S. 31(4FA) inserted (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 5(1)(2)**
- F48** S. 31(4FB) inserted (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 6(1)(2)**
- F49** Finance Act 1986 Sch. 19, para. 8(2), *in relation to transfers of value made on or after 18 March 1986.*
- F50** Words in s. 31(4G)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 8(2)** (with ss. 60, 101(1), 201(3)).
- F51** S. 31(5) substituted (31.7.1998 with effect in relation to the making of any designation on a claim made on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 4(3)(4)**

#### Modifications etc. (not altering text)

- C4** By Finance Act 1985 s. 95, *the functions of the Treasury were transferred to the Commissioners of Inland Revenue (“the Board”).*

## 32 Chargeable events.

- (1) Where there has been a conditionally exempt transfer of any property, tax shall be charged under this section on the first occurrence after the transfer [<sup>F52</sup>(or, if the transfer was a potentially exempt transfer, after the death of the transferor)] of an event which under this section is a chargeable event with respect to the property.
- (2) If the Treasury are satisfied that at any time an undertaking given with respect to the property under section 30 above or [<sup>F53</sup>subsection (5AA)] below has not been observed



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in a material respect, the failure to observe the undertaking is a chargeable event with respect to the property.

- (3) If—
- (a) the person beneficially entitled to the property dies, or
  - (b) the property is disposed of, whether by sale or gift or otherwise,
- the death or disposal is, subject to subsections (4) and (5) below, a chargeable event with respect to the property.
- (4) A death or disposal is not a chargeable event with respect to any property if the personal representatives of the deceased (or, in the case of settled property, the trustees or the person next entitled) within three years of the death make or, as the case may be, the disposal is—
- (a) a disposal of the property by sale by private treaty to a body mentioned in Schedule 3 to this Act, or a disposal of it to such a body otherwise than by sale, or
  - (b) a disposal in pursuance of section 230 below,
- and a death or disposal of the property after such a disposal as is mentioned in paragraph (a) or (b) above is not a chargeable event with respect to the property unless there has again been a conditionally exempt transfer of it after that disposal.
- (5) A death or disposal otherwise than by sale is not a chargeable event with respect to any property if—
- (a) the transfer of value made on the death or the disposal is itself a conditionally exempt transfer of the property, or
  - [<sup>F54</sup>(b) the condition specified in subsection (5AA) below is satisfied with respect to the property.]

[<sup>F55</sup>(5AA) The condition referred to in subsection (5)(b) above is satisfied if—

- (a) the requisite undertaking described in section 31 above is given with respect to the property by such person as the Board think appropriate in the circumstances of the case, or
- (b) (where the property is an area of land within section 31(1)(d) above) the requisite undertakings described in that section are given with respect to the property by such person or persons as the Board think appropriate in the circumstances of the case.]

[<sup>F56</sup>(5A) This section does not apply where section 32A below applies.]

(6) . . . . . <sup>F57</sup>

#### Textual Amendments

- F52** Finance Act 1986 Sch. 19, para. 9, *in relation to transfers on or after 18 March 1986.*
- F53** Words in s. 32(2) substituted (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 7(1)(9)**
- F54** S. 32(5)(b) substituted (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 7(2)(9)**
- F55** S. 32(5AA) inserted (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 7(3)(9)**
- F56** Finance Act 1985 Sch. 26, para. 3(2), *in relation to events occurring after 18 March 1985.*
- F57** *Subss. (6) and (7) repealed by Finance Act 1985 s. 94; Sch. 26, para. 3(3) and Sch. 27, Part XI, in relation to events occurring after 18 March 1985.*

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**Modifications etc. (not altering text)**

**C5** By Finance Act 1985 s. 95, the functions of the Treasury were transferred to the Commissioners of Inland Revenue (“the Board”).

**[<sup>F58</sup>32A Associated properties.**

- (1) For the purposes of this section the following properties are associated with each other, namely, a building falling within section 31(1)(c) above and (to the extent that any of the following exists) an area or areas of land falling within section 31(1)(d) above in relation to the building and an object or objects falling within section 31(1)(e) above in relation to the building; and this section applies where there are such properties, which are referred to as associated properties.
- (2) Where there has been a conditionally exempt transfer of any property (or part), tax shall be charged under this section in respect of that property (or part) on the first occurrence after the transfer [<sup>F59</sup>or, if the transfer was a potentially exempt transfer, after the death of the transferor] of an event which under this section is a chargeable event with respect to that property (or part).
- (3) If the Treasury are satisfied that at any time an undertaking given under section 30 above or this section for the maintenance, repair, preservation, access or keeping of any of the associated properties has not been observed in a material respect, then (subject to subsection (10) below) the failure to observe the undertaking is a chargeable event with respect to the whole of each of the associated properties of which there has been a conditionally exempt transfer.
- (4) If—
  - (a) the person beneficially entitled to property dies, or
  - (b) property (or part of it) is disposed of, whether by sale or gift or otherwise,
 then, if the property is one of the associated properties and an undertaking for its maintenance, repair, preservation, access or keeping has been given under section 30 above or this section, the death or disposal is (subject to subsections (5) to (10) below) a chargeable event with respect to the whole of each of the associated properties of which there has been a conditionally exempt transfer.
- (5) Subject to subsection (6) below, the death of a person beneficially entitled to property, or the disposal of property (or part), is not a chargeable event if the personal representatives of the deceased (or, in the case of settled property, the trustees or the person next entitled) within three years of the death make or, as the case may be, the disposal is—
  - (a) a disposal of the property (or part) concerned by sale by private treaty to a body mentioned in Schedule 3 to this Act, or to such a body otherwise than by sale, or
  - (b) a disposal of the property (or part) concerned in pursuance of section 230 below.
- (6) Where a disposal mentioned in subsection (5)(a) or (b) above is a part disposal, that subsection does not make the event non-chargeable with respect to property other than that disposed of [<sup>F60</sup>unless—
  - (a) the requisite undertaking described in section 31 above is given with respect to the property (or part) not disposed of by such person as the Board think appropriate in the circumstances of the case, or

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- (b) (where any of the property or part not disposed of is an area of land within section 31(1)(d) above) the requisite undertakings described in that section are given with respect to that property (or that part) by such person or persons as the Board think appropriate in the circumstances of the case;
- and] in this subsection “part disposal” means a disposal of property which does not consist of or include the whole of each property which is one of the associated properties and of which there has been a conditionally exempt transfer.
- (7) Where, after a relevant disposal (that is, a disposal mentioned in subsection (5)(a) or (b) above made in circumstances where that subsection applies), a person beneficially entitled to the property (or part) concerned dies or the property (or part) concerned is disposed of, the death or disposal is not a chargeable event with respect to the property (or part) concerned unless there has again been a conditionally exempt transfer of the property (or part) concerned after the relevant disposal.
- (8) The death of a person beneficially entitled to property, or the disposal of property (or part) otherwise than by sale, is not a chargeable event if—
- (a) the transfer of value made on the death or the disposal is itself a conditionally exempt transfer of the property (or part) concerned, or
- [ the condition specified in subsection (8A) below is satisfied with respect to
- <sup>F61</sup>(b) the property (or part) concerned.]
- [ The condition referred to in subsection (8)(b) above is satisfied if—
- <sup>F62</sup>(8A) (a) the requisite undertaking described in section 31 above is given with respect to the property (or part) by such person as the Board think appropriate in the circumstances of the case, or
- (b) (where any of the property or part is an area of land within section 31(1)(d) above) the requisite undertakings described in that section are given with respect to the property (or part) by such person or persons as the Board think appropriate in the circumstances of the case.]
- [ If the whole or part of any property is disposed of by sale and—
- <sup>F63</sup>(9) (a) the requisite undertaking described in section 31 above is given with respect to the property (or part) by such person as the Board think appropriate in the circumstances of the case, or
- (b) (where any of the property or part is an area of land within section 31(1)(d) above) the requisite undertakings described in that section are given with respect to the property (or part) by such person or persons as the Board think appropriate in the circumstances of the case,
- the disposal is a chargeable event only with respect to the whole or part actually disposed of (if it is a chargeable event with respect to such whole or part apart from this subsection).]
- (10) If—
- (a) the Treasury are satisfied that there has been a failure to observe, as to one of the associated properties or part of it, an undertaking for the property’s maintenance, repair, preservation, access or keeping, or
- (b) there is a disposal of one of the associated properties or part of it,
- and it appears to the Treasury that the entity consisting of the associated properties has not been materially affected by the failure or disposal, they may direct that it shall be a chargeable event only with respect to the property or part as to which there has

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been a failure or disposal (if it is a chargeable event with respect to that property or part apart from this subsection.]

#### Textual Amendments

- F58** Finance Act 1985 Sch. 26 para. 4, *in relation to events occurring after 18 March 1985.*
- F59** Finance Act 1986 Sch. 19, para. 10, *in relation to transfers on or after 18 March 1986.*
- F60** S. 32A(6)(a)(b) and the words “unless” and “and” substituted for the words “unless” to “case; and” (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 7(4)(9)**
- F61** S. 32A(8)(b) substituted (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 7(5)(9)**
- F62** S. 32A(8A) inserted (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 7(6)(9)**
- F63** S. 32A(9) substituted (31.7.1998 with effect in relation to the giving of any undertaking on or after 31.7.1998) by 1998 c. 36, s. 142, **Sch. 25 para. 7(7)(9)**

#### Modifications etc. (not altering text)

- C6** By Finance Act 1985 s. 95, *the functions of the Treasury were transferred to the Commissioners of Inland Revenue (“the Board”).*

### 33 Amount of charge under section 32.

(1) Tax chargeable in respect of any property under section 32 [<sup>F64</sup>or 32A] above by reference to a chargeable event shall be charged—

- (a) on an amount equal to the value of the property at the time of the chargeable event; and
- (b) at the following rate or rates—
  - (i) if the relevant person is alive, the rate or rates that would be applicable to that amount [<sup>F65</sup>in accordance with section 7(2) above] if it were the value transferred by a chargeable transfer made by the relevant person at that time;
  - (ii) if the relevant person is dead, the rate or rates that would have applied to that amount [<sup>F66</sup>in accordance with the appropriate provision of section 7 above] if it had been added to the value transferred on his death and had formed the highest part of that value.

[<sup>F67</sup>(2) For the purposes of subsection (1)(b)(ii) above the appropriate provision of section 7 above is—

- (a) if the conditionally exempt transfer by the relevant person was made on death (but the property was not treated as forming part of his estate immediately before his death only by virtue of section 102(3) of the Finance Act 1986), subsection (1) of section 7; and
- (b) in any other case, subsection (2) of section 7.

(2A) The rate or rates of tax determined under subsection (1)(b)(i) above in respect of any chargeable event shall not be affected by the death of the relevant person after that event.]

(3) Where the chargeable event is a disposal on sale and the sale—

- (a) was not intended to confer any gratuitous benefit on any person, and

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- (b) 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,  
the value of the property at the time of the chargeable event shall be taken for the purposes of subsection (1)(a) above to be equal to the proceeds of the sale.
- (4) Where by virtue of section 30(4) above the conditionally exempt transfer extended only to part of the property, the amount mentioned in subsection (1)(a) above shall be proportionately reduced.
- (5) The relevant person in relation to a chargeable event in respect of any property is—
- if there has been only one conditionally exempt transfer of the property before the event, the person who made that transfer;
  - if there have been two or more such transfers and the last was before, or only one of them was within, the period of thirty years ending with the event, the person who made the last of those transfers;
  - if there have been two or more such transfers within that period, the person who made whichever of those transfers the Board may select.
- (6) The conditionally exempt transfers to be taken into account for the purpose of subsection (5) above in relation to a chargeable event do not include transfers made before any previous chargeable event in respect of the same property or before any event which apart from section 32(4) above would have been such a chargeable event [F68 or, where the property has been disposed of as mentioned in section 32A(5) above, before any event which apart from section 32A(5) would have been such a chargeable event]
- (7) [F69 Subject to subsection (8) below], where after a conditionally exempt transfer of any property there is a chargeable transfer the value transferred by which is wholly or partly attributable to that property, any tax charged on that value so far as attributable to that property shall be allowed as a credit—
- if the chargeable transfer is a chargeable event with respect to the property, against the tax chargeable in accordance with this section by reference to that event;
  - if the chargeable transfer is not such a chargeable event, against the tax chargeable in accordance with this section by reference to the next chargeable event with respect to the property.
- [F70 (8) Where after a conditionally exempt transfer of any property there is a potentially exempt transfer the value transferred by which is wholly or partly attributable to that property and either—
- the potentially exempt transfer is a chargeable event with respect to the property, or
  - after the potentially exempt transfer, but before the death of the person who is the transferor in relation to the potentially exempt transfer, a chargeable event occurs with respect to the property,

the tax charged in accordance with this section by reference to that chargeable event shall be allowed as a credit against any tax which may become chargeable, by reason of the potentially exempt transfer proving to be a chargeable transfer, on so much of the value transferred by that transfer as is attributable to the property; and subsection (7) above shall not apply with respect to any tax so becoming chargeable.]

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### **Textual Amendments**

- F64** Finance Act 1985 Sch. 26 para. 5, *in relation to events occurring after 18 March 1985.*
- F65** Finance Act 1986 Sch. 19 para. 11(1)(a), *with effect from 18 March 1986. Originally* “under the second Table in Schedule 1 to this Act”.
- F66** Finance Act 1986 Sch. 19 para. 11(1)(b), *with effect from 18 March 1986. Originally* “under the appropriate Table”.
- F67** Finance Act 1986 Sch. 19 para. 11(2), *with effect from 18 March 1986. Originally* “(2) For the purposes of subsection (1)(b)(ii) above the appropriate Table is, if the conditionally exempt transfer by the relevant person was made on death, the first Table in Schedule 1 to this Act and, if not, the second Table”.
- F68** Finance Act 1985 Sch. 26 para. 6, *in relation to events occurring after 18 March 1985.*
- F69** Finance Act 1986 Sch. 19 para. 11(3), *with effect from 18 March 1986.*
- F70** Finance Act 1986 Sch. 19 para. 11(4), *in relation to chargeable events in respect of potentially exempt transfers made on or after 18 March 1986.*

### **34 Reinstatement of transferor’s cumulative total.**

- (1) Where tax has become chargeable under section 32 [<sup>F71</sup>or 32A] above by reference to a chargeable event in respect of any property (“the relevant event”) the rate or rates of tax applicable to any subsequent chargeable transfer made by the person who made the last conditionally exempt transfer of the property before the relevant event shall be determined as if the amount on which tax has become chargeable as aforesaid were value transferred by a chargeable transfer made by him at the time of the relevant event.
- (2) Where the person who made the last conditionally exempt transfer of the property before the relevant event—
  - (a) is dead, and
  - (b) is for the purposes of section 33 above the relevant person in relation to a subsequent chargeable event,
 section 33(1)(b)(ii) shall have effect as if the value transferred on his death were increased by the amount on which tax has become chargeable on the occasion of the relevant event.
- (3) If—
  - (a) the person who made the last conditionally exempt transfer of the property before the relevant event is not the relevant person for the purposes of section 33 above in relation to that event, and
  - (b) at the time of that event or within the previous five years the property is or has been comprised in a settlement made not more than thirty years before that event, and
  - (c) a person who is the settlor in relation to the settlement has made a conditionally exempt transfer of the property within those thirty years,
 subsections (1) and (2) above shall have effect with the substitution for references to the person who made the last conditionally exempt transfer before the relevant event of a reference to any such person as is mentioned in paragraph (c) above.
- (4) The conditionally exempt transfers to be taken into account for the purposes of subsection (3)(c) above in relation to the relevant event do not include transfers made before any previous chargeable event in respect of the same property or before any event which apart from section 32(4) above would have been such a chargeable event

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[<sup>F72</sup>or, where the property has been disposed of as mentioned in section 32A(5) above, before any event which apart from section 32A(5) would have been such a chargeable event].

#### Textual Amendments

**F71** Finance Act 1985 Sch. 26 para. 5, *in relation to events occurring after 18 March 1985.*

**F72** Finance Act 1985 Sch. 26 para. 6, *in relation to events occurring after 18 March 1985.*

### 35 Conditional exemption on death before 7th April 1976.

- (1) Schedule 5 to this Act shall have effect with respect to certain cases where, by virtue of sections 31 to 34 of the <sup>M4</sup>Finance Act 1975, the value of any property was left out of account in determining the value transferred on a death before 7th April 1976.
- (2) Where there has been a transfer of value in relation to which the value of any property has been left out of account under the provisions of sections 31 to 34 of the Finance Act 1975 and, before any tax has become chargeable in respect of that property under those provisions, there is a conditionally exempt transfer of that property, then, on the occurrence of a chargeable event in respect of that property—
  - [<sup>F73</sup>(a) if there has been no conditionally exempt transfer of the property on death, tax shall be chargeable either—
    - (i) under section 32 or 32A above (as the case may be), or
    - (ii) under Schedule 5 to this Act, as the Board may elect;
  - (b) if there has been such a conditionally exempt transfer, tax shall be chargeable under section 32 or 32A above (as the case may be) and not under that Schedule.]
- (3) In [<sup>F74</sup>sections 33(7) and (8) above, references] to a conditionally exempt transfer of any property [<sup>F75</sup>include references] to a transfer of value in relation to which the value of any property has been left out of account under the provisions of sections 31 to 34 of the Finance Act 1975 and, in relation to such property, references to a chargeable event or to the tax chargeable in accordance with section 33 above by reference to a chargeable event include references to an event on the occurrence of which tax becomes chargeable under Schedule 5 to this Act, or to the tax so chargeable.

#### Textual Amendments

**F73** Finance Act 1985 Sch. 26 para. 7, *in relation to events occurring after 18 March 1985. Originally* “(a) if there has been no conditionally exempt transfer of the property on death, tax shall be chargeable either under section 32 above or under Schedule 5 to this Act as the Board may elect; (b) if there has been such a conditionally exempt transfer, tax shall be chargeable under that section and not under that Schedule.”

**F74** Finance Act 1986 Sch. 19 para. 12, *with effect from 18 March 1986. Originally* “section 33(7) above, the reference”.

**F75** Finance Act 1986 Sch. 19 para. 12, *with effect from 18 March 1986. Originally* “includes a reference”.

#### Marginal Citations

**M4** 1975 c. 7.

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### [<sup>F76</sup>35A Variation of undertakings.

- (1) An undertaking given under section 30, 32 or 32A above or paragraph 5 of Schedule 5 to this Act may be varied from time to time by agreement between the Board and the person bound by the undertaking.
- (2) Where [<sup>F77</sup>the tribunal] is satisfied that—
  - (a) the Board have made a proposal for the variation of such an undertaking to the person bound by the undertaking,
  - (b) that person has failed to agree to the proposed variation within six months after the date on which the proposal was made, and
  - (c) it is just and reasonable, in all the circumstances, to require the proposed variation to be made,

[<sup>F78</sup>the tribunal may direct that the undertaking is to have effect from a specified date] as if the proposed variation had been agreed to by the person bound by the undertaking.
- (3) The date specified by the [<sup>F79</sup>tribunal] must not be less than sixty days after the date of [<sup>F80</sup>the tribunal's direction].
- (4) A direction under this section shall not take effect if, before the date specified by the [<sup>F81</sup>tribunal], a variation different from that to which the direction relates is agreed between the Board and the person bound by the undertaking.]

#### Textual Amendments

- F76** S. 35A and sidenote inserted (31.7.1998 with effect as mentioned in [Sch. 25 para. 8\(4\)](#) of the amending Act) by 1998 c. 36, s. 142, [Sch. 25 para. 8\(1\)](#)
- F77** Words in s. 35A(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 3(1), [Sch. 1 para. 109\(2\)\(a\)](#)
- F78** Words in s. 35A(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 3(1), [Sch. 1 para. 109\(2\)\(b\)](#)
- F79** Word in s. 35A(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 3(1), [Sch. 1 para. 109\(3\)\(a\)](#)
- F80** Words in s. 35A(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 3(1), [Sch. 1 para. 109\(3\)\(b\)](#)
- F81** Words in s. 35A(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 3(1), [Sch. 1 para. 109\(4\)](#)

#### Modifications etc. (not altering text)

- C7** S. 35A extended (31.7.1998) by 1992 c. 12, s. 258(8A) (as inserted (31.7.1998 with effect as mentioned in [Sch. 25 para. 9\(2\)](#) of the amending Act) by 1998 c. 36, s. 142, [Sch. 25 para. 9\(1\)](#))  
 S. 35A applied (with modifications) (31.7.1998) by 1998 c. 36, s. 142, [Sch. 25 para. 10](#)

## CHAPTER III

### ALLOCATION OF EXEMPTIONS

#### 36 Preliminary.

Where any one or more of sections 18, 23 to 27 and 30 above apply in relation to a transfer of value but the transfer is not wholly exempt—



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- (a) any question as to the extent to which it is exempt or, where it is exempt up to a limit, how an excess over the limit is to be attributed to the gifts concerned shall be determined in accordance with sections 37 to 40 below; and
- (b) section 41 below shall have effect as respects the burden of tax.

### **37 Abatement of gifts.**

- (1) Where a gift would be abated owing to an insufficiency of assets and without regard to any tax chargeable, the gift shall be treated for the purposes of the following provisions of this Chapter as so abated.
- (2) Where the value attributable, in accordance with section 38 below, to specific gifts exceeds the value transferred the gifts shall be treated as reduced to the extent necessary to reduce their value to that of the value transferred; and the reduction shall be made in the order in which, under the terms of the relevant disposition or any rule of law, it would fall to be made on a distribution of assets.

### **38 Attribution of value to specific gifts.**

- (1) Such part of the value transferred shall be attributable to specific gifts as corresponds to the value of the gifts; but if or to the extent that the gifts—
  - (a) are not gifts with respect to which the transfer is exempt or are outside the limit up to which the transfer is exempt, and
  - (b) do not bear their own tax,the amount corresponding to the value of the gifts shall be taken to be the amount arrived at in accordance with subsections (3) to (5) below.
- (2) Where any question arises as to which of two or more specific gifts are outside the limit up to which a transfer is exempt or as to the extent to which a specific gift is outside that limit—
  - (a) the excess shall be attributed to gifts not bearing their own tax before being attributed to gifts bearing their own tax, and
  - (b) subject to paragraph (a) above, the excess shall be attributed to gifts in proportion to their values.
- (3) Where the only gifts with respect to which the transfer is or might be chargeable are specific gifts which do not bear their own tax, the amount referred to in subsection (1) above is the aggregate of—
  - (a) the sum of the value of those gifts; and
  - (b) the amount of tax which would be chargeable if the value transferred equalled that aggregate.
- (4) Where the specific gifts not bearing their own tax are not the only gifts with respect to which the transfer is or might be chargeable, the amount referred to in subsection (1) above is such amount as, after deduction of tax at the assumed rate specified in subsection (5) below, would be equal to the sum of the value of those gifts.
- (5) For the purposes of subsection (4) above—
  - (a) the assumed rate is the rate found by dividing the assumed amount of tax by that part of the value transferred with respect to which the transfer would be chargeable on the hypothesis that—

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- (i) the amount corresponding to the value of specific gifts not bearing their own tax is equal to the aggregate referred to in subsection (3) above, and
  - (ii) the parts of the value transferred attributable to specific gifts and to gifts of residue or shares in residue are determined accordingly; and
  - (b) the assumed amount of tax is the amount that would be charged on the value transferred on the hypothesis mentioned in paragraph (a) above.
- (6) For the purposes of this section, any liability of the transferor which is not to be taken into account under section 5(5) above [<sup>F82</sup>or by virtue of section 103 of the Finance Act 1986] shall be treated as a specific gift [<sup>F82</sup>and to the extent that any liability of the transferor is abated under the said section 103, that liability shall be treated as a specific gift].

#### Textual Amendments

**F82** Finance Act 1986 Sch. 19 para. 13, with effect from 18 March 1986.

### 39 Attribution of value to residuary gifts.

Such part only of the value transferred shall be attributed to gifts of residue or shares in residue as is not attributed under section 38 above to specific gifts.

#### [<sup>F83</sup>39A Operation of sections 38 and 39 in cases of business or agricultural relief.

- (1) Where any part of the value transferred by a transfer of value is attributable to—
  - (a) the value of relevant business property, or
  - (b) the agricultural value of agricultural property,
 then, for the purpose of attributing the value transferred (as reduced in accordance with section 104 or 116 below), to specific gifts and gifts of residue or shares of residue, sections 38 and 39 above shall have effect subject to the following provisions of this section.
- (2) The value of any specific gifts of relevant business property or agricultural property shall be taken to be their value as reduced in accordance with section 104 or 116 below.
- (3) The value of any specific gifts not falling within subsection (2) above shall be taken to be the appropriate fraction of their value.
- (4) In subsection (3) above “the appropriate fraction” means a fraction of which—
  - (a) the numerator is the difference between the value transferred and the value, reduced as mentioned in subsection (2) above, of any gifts falling within that subsection, and
  - (b) the denominator is the difference between the unreduced value transferred and the value, before the reduction mentioned in subsection (2) above, of any gifts falling within that subsection;
 and in paragraph (b) above “the unreduced value transferred” means the amount which would be the value transferred by the transfer but for the reduction required by sections 104 and 116 below.
- (5) If or to the extent that specific gifts fall within paragraphs (a) and (b) of subsection (1) of section 38 above, the amount corresponding to the value of the gifts shall be arrived

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at in accordance with subsections (3) to (5) of that section by reference to their value reduced as mentioned in subsection (2) or, as the case may be, subsection (3) of this section.

(6) For the purposes of this section the value of a specific gift of relevant business property or agricultural property does not include the value of any other gift payable out of that property; and that other gift shall not itself be treated as a specific gift of relevant business property or agricultural property.

(7) In this section—

“agricultural property” and “the agricultural value of agricultural property” have the same meaning as in Chapter II of Part V of this Act; and

“relevant business property” has the same meaning as in Chapter I of that Part.]

#### **Textual Amendments**

**F83** Finance Act 1986 s. 105, *in relation to transfers of value made after 17 March 1986.*

#### **40 Gifts made separately out of different funds.**

Where gifts taking effect on a transfer of value take effect separately out of different funds the preceding provisions of this Chapter shall be applied separately to the gifts taking effect out of each of those funds, with the necessary adjustments of the values and amounts referred to in those provisions.

#### **41 Burden of tax.**

Notwithstanding the terms of any disposition—

- (a) none of the tax on the value transferred shall fall on any specific gift if or to the extent that the transfer is exempt with respect to the gift, and
- (b) none of the tax attributable to the value of the property comprised in residue shall fall on any gift of a share of residue if or to the extent that the transfer is exempt with respect to the gift.

#### **42 Supplementary.**

(1) In this Chapter—

“gift”, in relation to any transfer of value, means the benefit of any disposition or rule of law by which, on the making of the transfer, any property becomes (or would but for any abatement become) the property of any person or applicable for any purpose;

“given” shall be construed accordingly;

“specific gift” means any gift other than a gift of residue or of a share in residue.

(2) For the purposes of this Chapter a gift bears its own tax if the tax attributable to it falls on the person who becomes entitled to the property given or (as the case may be) is payable out of property applicable for the purposes for which the property given becomes applicable.

(3) Where—

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- (a) the whole or part of the value transferred by a transfer of value is attributable to property which is the subject of two or more gifts, and
- (b) the aggregate of the values of the property given by each of those gifts is less than the value transferred or, as the case may be, that part of it,

then for the purposes of this Chapter (and notwithstanding the definition of a gift in subsection (1) above) the value of each gift shall be taken to be the relevant proportion of the value transferred or, as the case may be, that part of it; and the relevant proportion in relation to any gift is the proportion which the value of the property given by it bears to the said aggregate.

- (4) Where on the death of a person legal rights under the law of Scotland are claimed by a person entitled to claim them, they shall be treated for the purposes of this Chapter as a specific gift which bears its own tax; and in determining the value of such legal rights, any tax payable on the estate of the deceased shall be left out of account.

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**Changes to legislation:**

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