
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, Cross Heading: IHTA 1984. (See end of Document for details)

SCHEDULES

SCHEDULE 36

TREATMENT OF LIABILITIES FOR INHERITANCE TAX PURPOSES

IHTA 1984

- 1 IHTA 1984 is amended as follows.
- 2 (1) Section 162 (liabilities) is amended as follows.
- (2) In subsection (4), after “possible” insert “ and to the extent that it is not taken to reduce value in accordance with section 162B ”.
- (3) In subsection (5), after “possible” insert “ and to the extent that it is not taken to reduce value in accordance with section 162B ”.
- 3 After section 162 insert—

“162A Liabilities attributable to financing excluded property

- (1) To the extent that a liability is attributable to financing (directly or indirectly) —
- (a) the acquisition of any excluded property, or
 - (b) the maintenance, or an enhancement, of the value of any such property,
- it may only be taken into account so far as permitted by subsections (2) to (4).
- (2) Where the property mentioned in subsection (1) has been disposed of, in whole or in part, for full consideration in money or money's worth, the liability may be taken into account up to an amount equal to so much of that consideration as—
- (a) is not excluded property, and
 - (b) has not been used—
 - (i) to finance (directly or indirectly) the acquisition of excluded property or the maintenance, or an enhancement, of the value of such property, or
 - (ii) to discharge (directly or indirectly) any other liability that, by virtue of this section, would not be taken into account.
- (3) The liability may be taken into account up to an amount equal to the value of such of the property mentioned in subsection (1) as—
- (a) has not been disposed of, and
 - (b) is no longer excluded property.
- (4) To the extent that any remaining liability is greater than the value of such of the property mentioned in subsection (1) as—
- (a) has not been disposed of, and

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- (b) is still excluded property,
it may be taken into account, but only so far as the remaining liability is not greater than that value for any of the reasons mentioned in subsection (7).
- (5) Subsection (6) applies where—
- (a) a liability or any part of a liability is attributable to financing (directly or indirectly)—
- (i) the acquisition of property that was not excluded property,
or
(ii) the maintenance, or an enhancement, of the value of such property, and
- (b) the property or part of the property—
- (i) has not been disposed of, and
(ii) has become excluded property.
- (6) The liability or (as the case may be) the part may only be taken into account to the extent that it exceeds the value of the property, or the part of the property, that has become excluded property, but only so far as it does not exceed that value for any of the reasons mentioned in subsection (7).
- (7) The reasons are—
- (a) arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage,
- (b) an increase in the amount of the liability (whether due to the accrual of interest or otherwise), or
- (c) a disposal, in whole or in part, of the property.
- (8) In this section—
- “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations;
- “remaining liability” means the liability mentioned in subsection (1) so far as subsections (2) and (3) do not permit it to be taken into account;
- “tax advantage” means—
- (a) the avoidance or reduction of a charge to tax, or
(b) the avoidance of a possible determination in respect of tax.

162B Liabilities attributable to financing certain relievable property

- (1) Subsection (2) applies if—
- (a) the whole or part of any value transferred by a transfer of value is to be treated as reduced, under section 104, by virtue of it being attributable to the value of relevant business property, and
- (b) the transferor has a liability which is attributable, in whole or in part, to financing (directly or indirectly)—
- (i) the acquisition of that property, or
(ii) the maintenance, or an enhancement, of its value.

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- (2) The liability is, so far as possible, to be taken to reduce the value attributable to the value of the relevant business property, before it is treated as reduced under section 104, but only to the extent that the liability—
 - (a) is attributable as mentioned in subsection (1)(b), and
 - (b) does not reduce the value of the relevant business property by virtue of section 110(b).
- (3) Subsection (4) applies if—
 - (a) the whole or part of any value transferred by a transfer of value is to be treated as reduced, under section 116, by virtue of it being attributable to the agricultural value of agricultural property, and
 - (b) the transferor has a liability which is attributable, in whole or in part, to financing (directly or indirectly)—
 - (i) the acquisition of that property, or
 - (ii) the maintenance, or an enhancement, of its agricultural value.
- (4) To the extent that the liability is attributable as mentioned in subsection (3) (b), it is, so far as possible, to be taken to reduce the value attributable to the agricultural value of the agricultural property, before it is treated as reduced under section 116.
- (5) Subsection (6) applies if—
 - (a) part of the value of a person's estate immediately before death is attributable to the value of land on which trees or underwood are growing,
 - (b) the value of the trees or underwood is to be left out of account, under section 125(2)(a), in determining the value transferred by the chargeable transfer made on the person's death, and
 - (c) the person has a liability which is attributable, in whole or in part, to financing (directly or indirectly)—
 - (i) the acquisition of the land or trees or underwood,
 - (ii) planting the trees or underwood, or
 - (iii) the maintenance, or an enhancement, of the value of the trees or underwood.
- (6) To the extent that the liability is attributable as mentioned in subsection (5) (c), it is, so far as possible, to be taken to reduce the value of the trees or underwood, before their value is left out of account.
- (7) Subject to subsection (8), to the extent that a liability is, in accordance with this section, taken to reduce value in determining the value transferred by a chargeable transfer, that liability is not then to be taken into account in determining the value transferred by any subsequent transfer of value by the same transferor.
- (8) Subsection (7) does not prevent a liability from being taken into account by reason only that the liability has previously been taken into account in determining the amount on which tax is chargeable under section 64.

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- (9) For the purposes of subsections (1) to (4) and (7), references to a transfer of value or chargeable transfer include references to an occasion on which tax is chargeable under Chapter 3 of Part 3 (apart from section 79) and—
- (a) references to the value transferred by a transfer of value or chargeable transfer include references to the amount on which tax is then chargeable, and
 - (b) references to the transferor include references to the trustees of the settlement concerned.
- (10) In this section—
- “agricultural property” and “agricultural value” have the same meaning as in Chapter 2 of Part 5;
 - “relevant business property” has the same meaning as in Chapter 1 of Part 5.

162C Sections 162A and 162B: supplementary provision

- (1) This section applies for the purposes of determining the extent to which a liability is attributable as mentioned in section 162A(1) or (5) or 162B(1)(b), (3)(b) or (5)(c).
- (2) Where a liability was discharged in part before the time in relation to which the question as to whether or how to take it into account arises—
 - (a) any part of the liability that, at the time of discharge, was not attributable as mentioned in subsection (1) is, so far as possible, to be taken to have been discharged first,
 - (b) any part of the liability that, at the time of discharge, was attributable as mentioned in section 162B(1)(b), (3)(b) or (5)(c) is, so far as possible, only to be taken to have been discharged after any part of the liability within paragraph (a) was discharged, and
 - (c) any part of the liability that, at the time of discharge, was attributable as mentioned in section 162A(1) or (5) is, so far as possible, only to be taken to have been discharged after any parts of the liability within paragraph (a) or (b) were discharged.”

4 After section 175 (estate on death: liability to make future payments etc) insert—

“175A Discharge of liabilities after death

- (1) In determining the value of a person's estate immediately before death, a liability may be taken into account to the extent that—
 - (a) it is discharged on or after death, out of the estate or from excluded property owned by the person immediately before death, in money or money's worth, and
 - (b) it is not otherwise prevented, under any provision of this Act, from being taken into account.
- (2) Where the whole or any part of a liability is not discharged in accordance with paragraph (a) of subsection (1), the liability or (as the case may be) the part may only be taken into account for the purpose mentioned in that subsection to the extent that—

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- (a) there is a real commercial reason for the liability or the part not being discharged,
 - (b) securing a tax advantage is not the main purpose, or one of the main purposes, of leaving the liability or part undischarged, and
 - (c) the liability or the part is not otherwise prevented, under any provision of this Act, from being taken into account.
- (3) For the purposes of subsection (2)(a) there is a real commercial reason for a liability, or part of a liability, not being discharged where it is shown that—
 - (a) the liability is to a person dealing at arm's length, or
 - (b) if the liability were to a person dealing at arm's length, that person would not require the liability to be discharged.
- (4) Where, by virtue of this section, a liability is not taken into account in determining the value of a person's estate immediately before death, the liability is also not to be taken into account in determining the extent to which the estate of any spouse or civil partner of the person is increased for the purposes of section 18.
- (5) In subsection (2)(b) “tax advantage” means—
 - (a) a relief from tax or increased relief from tax,
 - (b) a repayment of tax or increased repayment of tax,
 - (c) the avoidance, reduction or delay of a charge to tax or an assessment to tax, or
 - (d) the avoidance of a possible assessment to tax or determination in respect of tax.
- (6) In subsection (5) “tax” includes income tax and capital gains tax.
- (7) Where the liability is discharged as mentioned in subsection (1)(a) only in part—
 - (a) any part of the liability that is attributable as mentioned in section 162A(1) or (5) is, so far as possible, taken to be discharged first,
 - (b) any part of the liability that is attributable as mentioned in section 162B(1)(b), (3)(b) or (5)(c) is, so far as possible, taken to be discharged only after any part of the liability within paragraph (a) is discharged, and
 - (c) the liability so far as it is not attributable as mentioned in paragraph (a) or (b) is, so far as possible, taken to be discharged only after any parts of the liability within either of those paragraphs are discharged.”

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