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SCHEDULES

SCHEDULE 14

Section 96.

CAPITAL TRANSFER TAX RELIEF FOR AGRICULTURAL PROPERTY

Preliminary

1 (1) In this Schedule " transfer of value " includes a distribution payment and a capital distribution, and references to the value transferred by a transfer of value and to a transferor shall be construed as including respectively the amount of such a payment or distribution and the trustees of the settlement concerned.

(2) In this Schedule " agricultural property " means agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture ; and also includes such cottages, farm buildings and farm-houses, together with the land occupied with them, as are of a character appropriate to the property.

(3) For the purposes of this Schedule the agricultural value of any agricultural property shall be taken to be the value which would be the value of the property if the property were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property.

(4) This Schedule applies to agricultural property only if it is in the United Kingdom, the Channel Islands or the Isle of Man.

Nature of relief

2 (1) Where the whole or part of the value transferred by a transfer of value is attributable to the agricultural value of agricultural property, the whole or that part of the value transferred shall be treated as reduced by the appropriate percentage, but subject to the following provisions of this Schedule.

(2) The appropriate percentage is 50 per cent, if either—

(a) the interest of the transferor in the property immediately before the transfer carries the right to vacant possession or the right to obtain it within the next twelve months, or

(b) the transferor has been beneficially entitled to that interest since before 10th March 1981 and the conditions set out in sub-paragraph (3) below are satisfied ;

and, subject to sub-paragraph (4) below, it is 20 per cent, in any other case.

(3) The conditions referred to in sub-paragraph (2)(b) above are—

(a) that, if the transferor had disposed of his interest by a transfer of value immediately before 10th March 1981 and duly made a claim under paragraph 1 of Schedule 8 to the Finance Act 1975, the value transferred would have been computed in accordance with paragraph 2 of that Schedule and relief

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would not have been limited by paragraph 5 of that Schedule (restriction to £250,000 or one thousand acres): and

(b) that the transferor's interest did not at any time during the period beginning with 10th March 1981 and ending with the date of the transfer carry a right mentioned in sub-paragraph (2)(a) above, and did not fail to do so by reason of any act or deliberate omission of the transferor during that period.

(4) Where the appropriate percentage would be 50 per cent, but for a limitation on relief that would have been imposed (as mentioned in sub-paragraph (3)(a) above) by paragraph 5 of Schedule 8 to the Finance Act 1975, the appropriate percentage shall be 50 per cent, in relation to a part of the value transferred equal to the amount which would have attracted relief under that Schedule and 20 per cent, in relation to the remainder.

(5) In determining for the purposes of sub-paragraphs (3)(a) and (4) above whether or to what extent relief under Schedule 8 to the Finance Act 1975 would have been limited by paragraph 5 of that Schedule, that paragraph shall be construed as if references to relief given under that Schedule in respect of previous chargeable transfers included references to relief given under this Schedule by virtue of sub-paragraph (2)(b) or (4) above in respect of previous chargeable transfers made on or after 10th March 1981.

(6) For the purposes of this Schedule the interest of one of two or more joint tenants or tenants in common (or, in Scotland, joint owners or owners in common) shall be taken to carry a right referred to in sub-paragraph (2)(a) above if the interests of all of them together carry that right.

(7) For the purposes of this paragraph, the value transferred by a transfer of value shall be calculated as a value on which no tax is chargeable.

Minimum period of occupation or ownership

3 Subject to the following provisions of this Schedule, paragraph 2 above does not apply to any agricultural property unless—

(a) it was occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of the transfer ; or

(b) it was owned by him throughout the period of seven years ending with that date and was throughout that period occupied (by him or another) for the purposes of agriculture.

Replacements

4 (1) Where the agricultural property occupied by the transferor on the date of the transfer replaced other agricultural property, the condition stated in paragraph 3(a) above shall be treated as satisfied if it, the other property and any agricultural property directly or indirectly replaced by the other property were occupied by the transferor for the purposes of agriculture for periods which together comprised at least two years falling within the five years ending with that date.

(2) Where the agricultural property owned by the transferor on the date of the transfer replaced other agricultural property the condition stated in paragraph 3(b) above shall be treated as satisfied if it, the other property and any agricultural property directly or indirectly replaced by the other property were, for periods which together comprised at least seven years falling within the ten years ending with that date, both owned by the transferor and occupied (by him or another) for the purposes of agriculture.

(3) Subject to sub-paragraph (4) below, in a case falling within sub-paragraph (1) or (2) above relief under this Schedule shall not exceed what it would have been had the replacement or any one or more of the replacements not been made.

(4) For the purposes of sub-paragraph (3) above changes resulting from the formation, alteration or dissolution of a partnership shall be disregarded.

Occupation by company or partnership

5 (1) For the purposes of paragraphs 3 and 4 above, occupation by a company which is controlled by the transferor shall be treated as occupation by the transferor.

(2) For the purposes of paragraphs 3 and 4 above, occupation of any property by a Scottish partnership shall, notwithstanding section 4(2) of the Partnership Act 1890, be treated as occupation of it by the partners.

Successions

6 Where the transferor became entitled to his interest on the death of his spouse on or after 10th March 1981—

(a) he shall for the purposes of paragraph 2(2)(b) above be deemed to have been beneficially entitled to it for any period for which his spouse was beneficially entitled to it;

(b) the condition set out in paragraph 2(3)(a) shall be taken to be satisfied if and only if it is satisfied in relation to his spouse; and

(c) the condition set out in paragraph 2(3)(b) shall be taken to be satisfied only if it is satisfied both in relation to him and in relation to his spouse.

7 For the purposes of paragraph 3 above, where the transferor became entitled to any property on the death of another person—

(a) he shall be deemed to have owned it (and, if he subsequently occupies it, to have occupied it) from the date of the death ; and

(b) if that other person was his spouse he shall also be deemed to have occupied it for the purposes of agriculture for any period for which it was so occupied by his spouse, and to have owned it for any period for which his spouse owned it

8 (1) Where—

(a) the whole or part of the value transferred by a transfer of value (in this paragraph referred to as the earlier transfer) was eligible for relief under this Schedule (or would have been so eligible if such relief had been capable of being given in respect of transfers of value made at that time); and

(b) the whole or part of the property which, in relation to the earlier transfer, was or would have been eligible for relief became, through the earlier transfer, the property of the person (or of the spouse of the person) who is the transferor in relation to a subsequent transfer of value and is at the time of the subsequent transfer occupied for the purposes of agriculture either by that person or by the personal representative of the transferor in relation to the earlier transfer; and

(c) that property or part or any property directly or indirectly replacing it would (apart from paragraph 3 above) have been eligible for relief in relation to the subsequent transfer of value; and

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(d) either the earlier transfer was, or the subsequent transfer of value is, a transfer made on the death of the transferor,

the property which would have been eligible for relief but for paragraph 3 above shall be eligible for relief notwithstanding that paragraph.

(2) Where the property which, by virtue of sub-paragraph (1) above, is eligible for relief replaced the property or part referred to in paragraph (c) of that sub-paragraph, relief under this Schedule shall not exceed what it would nave been had the replacement or any one or more of the replacements not been made, but paragraph 4(4) above shall apply for the purposes of this sub-paragraph as it applies for the purposes of paragraph 4(3).

(3) Where, under the earlier transfer, the amount of the value transferred which was attributable to the property or part referred to in sub-paragraph (1)(c) above was part only of its value, a like part only of the value which (apart from this sub-paragraph) would fall to be reduced under this Schedule by virtue of this paragraph shall be so reduced.

Shares and securities of companies

9 (1) Where the whole or part of the value transferred is attributable to the value of shares in or securities of a company it shall be taken for the purposes of this Schedule to be attributable (so far as appropriate) to the agricultural value of agricultural property if and only if—

(a) the agricultural property forms part of the company's assets and part of the value of the shares or securities can be attributed to the agricultural value of the agricultural property ; and

(b) the shares or securities gave the transferor control of the company immediately before the transfer.

(2) Shares or securities shall not be regarded for the purposes of sub-paragraph (1)(b) above as giving the transferor control of a company if—

(a) they would not have been sufficient, without other property, to give him control of the company immediately before the transfer ; and

(b) their value is taken by virtue of paragraph 9A of Schedule 10 to the Finance Act 1975 to be less than the value previously determined.

10 Where paragraph 9 above applies, the references in paragraph 2(2)(a) and (3)(b) above to the transferor's interest shall be construed as references to the company's interest and paragraph 11 below shall apply instead of paragraph 3 above.

11 Subject to the following provisions of this Schedule, paragraph 2 does not apply by virtue of paragraph 9 above unless—

(a) the agricultural property—

(i) was occupied by the company for the purposes of agriculture throughout the period of two years ending with the date of the transfer ; or

(ii) was owned by the company throughout the period of seven years ending with that date and was throughout that period occupied (by the company or another) for the purposes of agriculture ; and

(b) the shares or securities were owned by the transferor—

(i) in a case within paragraph (a)(i) above, throughout the period there mentioned ;

(ii) in a case within paragraph (a)(ii) above, throughout the period there mentioned.

12 (1) Sub-paragraphs (1) and (2) of paragraph 4 above shall apply in relation to the conditions stated in paragraph 11 (a) above as they apply in relation to the conditions stated in paragraph 3 above, taking references to the transferor as references to the company.

(2) Where the shares or securities owned by the transferor on the date of the transfer replaced other eligible property (that is to say, agricultural property or shares or securities the value of which is wholly or partly attributable to the value of such property) the condition stated in paragraph 11(b) above shall be treated as satisfied if the shares or securities, the other eligible property which they replaced and any eligible property directly or indirectly replaced by the other eligible property were owned by the transferor for periods which together comprised, in a case within paragraph 11(a)(i) above, at least two years falling within the five years ending with that date or, in a case within paragraph 11(a)(ii) above, at least seven years falling within the ten years ending with that date.

(3) Sub-paragraphs (3) and (4) of paragraph 4 above shall have effect in relation to a case falling within the foregoing provisions of this paragraph as they have effect in relation to a case falling within sub-paragraphs (1) and (2) of that paragraph.

13 For the purposes of paragraph 11 above, a company shall be treated as having occupied the agricultural property at any time when it was occupied by a person who subsequently controls the company.

Contracts for sale

14 (1) Paragraph 2 above does not apply to agricultural property if at the time of the transfer the transferor has entered into a binding contract for its sale, except where the sale is to a company and is made wholly or mainly in consideration of shares in or securities of the company which will give the transferor control of the company.

(2) Paragraph 2 above does not apply by virtue of paragraph 9 above if at the time of the transfer the transferor has entered into a binding contract for the sale of the shares or securities concerned, except where the sale is made for the purpose of reconstruction or amalgamation.

Control

15 Paragraph 13(7) of Schedule 4 to the Finance Act 1975 (control of company) applies for the purposes of this Schedule.

Saving

16 Nothing in this Schedule shall be taken to apply to the value included under section 22(5) of the Finance Act 1975 in the value of a person's estate immediately before his death.