



# Inheritance Tax Act 1984

## 1984 CHAPTER 51

### PART II

#### EXEMPT TRANSFERS

#### 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—

- (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.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Inheritance Tax Act 1984, CHAPTER III. (See end of Document for details)*

### **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—
    - (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>F1</sup>or by virtue of section 103 of the Finance Act 1986] shall be treated as a specific gift [<sup>F1</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**

**F1** Finance Act 1986 Sch. 19 para. 13, with effect from 18 March 1986.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Inheritance Tax Act 1984, CHAPTER III. (See end of Document for details)*

### **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>F2</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 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**

**F2** Finance Act 1986 s. 105, *in relation to transfers of value made after 17 March 1986.*

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Inheritance Tax Act 1984, CHAPTER III. (See end of Document for details)*

**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—

- (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.

**Status:**

Point in time view as at 01/02/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Inheritance Tax Act 1984, CHAPTER III.