



Finance Act 1986

1986 CHAPTER 41

PART V

INHERITANCE TAX

102 Gifts with reservation.

- (1) Subject to subsections (5) and (6) below, this section applies where, on or after 28th March 1986, an individual disposes of any property by way of gift and either—
- (a) possession and enjoyment of the property is not bona fide assumed by the donee at or before the beginning of the relevant period; or
 - (b) at any time in the relevant period the property is not enjoyed to the entire exclusion, or virtually to the entire exclusion, of the donor and of any benefit to him by contract or otherwise;
- and in this section “the relevant period” means a period ending on the date of the donor’s death and beginning seven years before that date or, if it is later, on the date of the gift.
- (2) If and so long as—
- (a) possession and enjoyment of any property is not bona fide assumed as mentioned in subsection (1)(a) above, or
 - (b) any property is not enjoyed as mentioned in subsection (1)(b) above,
- the property is referred to (in relation to the gift and the donor) as property subject to a reservation.
- (3) If, immediately before the death of the donor, there is any property which, in relation to him, is property subject to a reservation then, to the extent that the property would not, apart from this section, form part of the donor’s estate immediately before his death, that property shall be treated for the purposes of the 1984 Act as property to which he was beneficially entitled immediately before his death.
- (4) If, at a time before the end of the relevant period, any property ceases to be property subject to a reservation, the donor shall be treated for the purposes of the 1984 Act

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for the Finance Act 1986, Section 102. (See end of Document for details)*

as having at that time made a disposition of the property by a disposition which is a potentially exempt transfer.

(5) This section does not apply if or, as the case may be, to the extent that the disposal of the property by way of gift is an exempt transfer by virtue of any of the following provisions of Part II of the 1984 Act,—

- (a) section 18 (transfers between spouses [^{F1}or civil partners]) [^{F2}, except as provided by subsections (5A) and (5B) below];
- (b) section 20 (small gifts);
- (c) section 22 (gifts in consideration of marriage [^{F3}or civil partnership]);
- (d) section 23 (gifts to charities);
- (e) section 24 (gifts to political parties);
- [^{F4}(ee) section 24A (gifts to housing associations);]
- (f) section 25 (gifts for national purposes, etc);
- [^{F5}(g)]
- (h) section 27 (maintenance funds for historic buildings); ^{F6}...
- (i) section 28 (employee trusts)[^{F7}; and
- (j) section 28A (employee-ownership trusts).]

[^{F8}(5A) Subsection (5)(a) above does not prevent this section from applying if or, as the case may be, to the extent that—

- (a) the property becomes settled property by virtue of the gift,
- (b) by reason of the donor’s spouse [^{F9}or civil partner] (“the relevant beneficiary”) becoming beneficially entitled to an interest in possession in the settled property, the disposal is or, as the case may be, is to any extent an exempt transfer by virtue of section 18 of the 1984 Act in consequence of the operation of section 49 of that Act (treatment of interests in possession),
- (c) at some time after the disposal, but before the death of the donor, the relevant beneficiary’s interest in possession comes to an end, and
- (d) on the occasion on which that interest comes to an end, the relevant beneficiary does not become beneficially entitled to the settled property or to another interest in possession in the settled property.

(5B) If or, as the case may be, to the extent that this section applies by virtue of subsection (5A) above, it has effect as if the disposal by way of gift had been made immediately after the relevant beneficiary’s interest in possession came to an end.

(5C) For the purposes of subsections (5A) and (5B) above—

- (a) section 51(1)(b) of the 1984 Act (disposal of interest in possession treated as coming to end of interest) applies as it applies for the purposes of Chapter 2 of Part 3 of that Act; and
- (b) references to any property or to an interest in any property include references to part of any property or interest.]

(6) This section does not apply if the disposal of property by way of gift is made under the terms of a policy issued in respect of an insurance made before 18th March 1986 unless the policy is varied on or after that date so as to increase the benefits secured or to extend the term of the insurance; and, for this purpose, any change in the terms of the policy which is made in pursuance of an option or other power conferred by the policy shall be deemed to be a variation of the policy.

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- (7) If a policy issued as mentioned in subsection (6) above confers an option or other power under which benefits and premiums may be increased to take account of increases in the retail price index (as defined in section 8(3) of the 1984 Act) or any similar index specified in the policy, then, to the extent that the right to exercise on or before 1st August 1986, the exercise of that option or power before that date shall be disregarded for the purposes of subsection (6) above.
- (8) Schedule 20 to this Act has effect for supplementing this section.

Textual Amendments

- F1** Words in s. 102(5)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **44(2)(a)**
- F2** Words in s. 102(5)(a) inserted (with effect in accordance with s. 185(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. **185(2)**
- F3** Words in s. 102(5)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **44(2)(b)**
- F4** [Finance Act 1989 \(c. 26, SIF 63:1, 2\)](#), s. **171(5)**, with effect from 14 March 1989
- F5** S. 102(5)(g) repealed (31.7.1998 with effect as mentioned in Sch. 27 Note 2 of the amending Act) [1998 c. 36, s. 165, Sch. 27 Pt. IV](#)
- F6** Word in s. 102(5) omitted (with effect in accordance with Sch. 37 para. 17(2) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), **Sch. 37 para. 17(1)**
- F7** S. 102(5)(j) and word inserted (with effect in accordance with Sch. 37 para. 17(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **Sch. 37 para. 17(1)**
- F8** S. 102(5A)-(5C) inserted (with effect in accordance with s. 185(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. **185(3)**
- F9** Words in s. 102(5A)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **44(3)**

Modifications etc. (not altering text)

- C1** Pt. V modified (with effect in accordance with s. 84(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 15 para. 22(2)(b)(i)**
- C2** Pt. V modified (with effect in accordance with s. 84(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 15 para. 21(2)(b)(i)**
- C3** S. 102(3)(4) applied (with effect in accordance with s. 84(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 15 para. 21(2)(b)(ii)**
- C4** S. 102(3)(4) applied (with effect in accordance with s. 84(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 15 para. 22(2)(b)(ii)**

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1986, Section 102.