Finance Act 1958

1958 CHAPTER 56

PART V

ESTATE DUTY

28 Purchases of interests in expectancy

(1) Where at any time within five years before a death—

(a) there has been in any settled property an interest limited to cease on the death; and

(b) a purchase of another interest in that property expectant on or subject to the interest so limited has been made either by the deceased or out of or by means of any property which would have passed for the purposes of estate duty on his death if he had died immediately before the purchase;

then, subject to the following provisions of this section, there shall be deemed for purposes of estate duty on the death to be included in the property passing on the death (in addition to the other property, if any, so included) a sum of money equal to the amount or value of the consideration given for the purchase of that other interest:

Provided that, subject to subsections (2) and (3) of this section, where the settlement is subsisting at the death, this subsection shall not apply unless the interest purchased passes for purposes of estate duty on the death, and if it does so pass, the persons who are or would be accountable for any duty chargeable on the death in respect of it may (by notice in writing given to the Commissioners of Inland Revenue within twelve months of the death or such longer period as the Commissioners may allow) elect that neither this subsection nor subsection (10) of section seven of the Finance Act, 1894 (which provides that the same property shall not be twice charged or twice aggregated on the same death), shall have effect on the death in relation to that interest.

(2) For the purposes of the proviso to subsection (1) of this section—

(a) where the settlement has come to an end as respects part but not the whole of the settled property, there shall be deemed to have been a separate settlement of that part; and

(b) where at the death there are separate interests in or derived out of the interest purchased, the purchase of that interest shall be treated as having comprised a separate purchase of each of those interests.

(3) Where a purchased interest as respects which an election might otherwise be made under the proviso to subsection (1) of this section has ceased to subsist as a separate interest before the death and before the time when it was originally limited to determine, any other interest into which the interest purchased has been absorbed or enlarged shall be treated for the purposes of this section (including this subsection) as if it had been the subject matter of the purchase:

Provided that where an election under that proviso is made as respects any interest by virtue of this subsection, the value for the purposes of estate duty of that interest shall be limited to the proportion thereof attributable to the purchased interests which that interest is treated under this subsection as representing.

(4) In determining under this section the duty chargeable by reason of the purchase of an interest in settled property, any consideration for the purchase consisting of another interest under the settlement shall be disregarded, unless there has been a prior purchase of that other interest, being a purchase in respect of which duty would be chargeable on the death under this section apart from the proviso to subsection (1) and apart from this subsection : and if there has been such a prior purchase, the consideration for it shall be treated for the purposes of this section (except for the purpose of determining its value) as given not for that purchase but, in place of the said other interest, for the first-mentioned purchase.

(5) Where an interest limited to cease on a death ceases to subsist as a separate interest in consequence of any dealing with another interest expectant on or subject to it or of a dealing with that other interest and a dealing with the interest so limited, then this section shall apply to a purchase of that other interest or any interest expectant on or subject to it, as if the interest so limited had continued to subsist as a separate interest until the time when it was originally limited to determine.

(6) Where the interest referred to in paragraph (a) of subsection (1) of this section is such that on the cesser of that interest the settled property (or, if the interest purchased is an interest in part only of that property, that part of it) is to be treated for purposes of estate duty as passing to a limited extent only, then the consideration for the purchase shall be treated for the purposes of this section as reduced to a corresponding extent.

(7) Any sum deemed to pass on a death by virtue of subsection (1) of this section shall for the purpose of aggregation, or of determining the persons accountable for duty—

(a) where the purchase was made by the deceased, be treated as having been property to which he was absolutely entitled at his death; and

(b) in any other case, be treated as forming part of the property out of or by means of which the purchase was made;

but where the settlement has come to an end before the death as respects all or any of the property in which the interest purchased subsisted, section forty-four of the Finance Act, 1950 (which provides for the trustees of a settlement to be accountable for duty chargeable by virtue of section forty-three of the Finance Act, 1940, by reason of a disposition or determination of a life interest), shall apply as if the duty were chargeable by virtue of the said section forty-three in respect of the property in which the interest purchased subsisted.

(8) Section fifty-seven of the Finance (1909-10) Act, 1910 (which provides that in valuing an estate for duty purposes no allowance shall be made in certain cases for debts or incumbrances incurred or created for the purchase of an interest in expectancy), shall not apply to debts or incumbrances incurred or created for the purpose of or in consideration for a purchase made within the five years before the death of the deceased; and where duty is chargeable by virtue of this section by reason of a purchase of an interest, and the deceased incurred any debt or created any incumbrance wholly or partly as consideration for that purchase, that consideration for the debt or incumbrance shall be left out of account for the purpose of section thirty-one of the Finance Act, 1939 (which excludes or limits the making for purposes of estate duty of an allowance for certain debts incurred or incumbrances created by the deceased for the purchase of property coming ultimately from himself).

(9) Any allowance for a debt or incumbrance, to the extent to which it could not be made apart from subsection (8) of this section, shall, where an election under the proviso to subsection (1) of this section has effect in relation to the purchase in question, be deducted from the value, on which by reason of that purchase duty is chargeable, of the interest chargeable by virtue of the election, and shall not be made otherwise.

(10) In relation to a purchase from a body of persons established for public or charitable purposes only, or from the trustees of a trust so established, references to one year before the death shall be substituted for the references in subsections (1) and (8) of this section to five years before the death.

(11) For the purposes of this section—

(a) any transaction whereby a person for money or money's worth acquires an interest or secures its extinction for his benefit shall be deemed to be a purchase of that interest by him, and any interest extinguished shall be treated as absorbed into the interest benefiting from the extinction;

(b) any consideration for a purchase given otherwise than in cash shall be valued as at the date of the purchase;

(c) any consideration given for the purchase of more than one interest under a settlement, or for the purchase of an interest under a settlement and for something else, shall be apportioned as may be just;

(d) the property in which an interest under a settlement from time to time subsists (or is treated for the purposes of this section as subsisting) shall be treated as the same property, notwithstanding any substitution of one item for another or any accretion thereto.

(12) This section shall not apply where estate duty neither is chargeable on the settled property on the death by reason of the coming to an end of the interest referred to in paragraph (a) of subsection (1), nor would have been if that interest had continued to subsist as a separate interest until the time when it was originally limited to determine, or where the settled property is or, as the case may be, would have been of no principal value, or of too small a principal value for duty to be payable.

(13) This section shall have effect in relation to any purchase made after the fifteenth day of April, nineteen hundred and fifty-eight, and in relation to any such purchase shall have effect notwithstanding that the death occurs before the date of the passing of this Act.