

## SCHEDULES

### SCHEDULE 26

Section 121.

#### RELIEF FROM ESTATE DUTY SUPPLEMENTARY PROVISIONS

#### PART I

##### GIFTS EXCEPTED FROM SECTION 121

- 1 A gift is excepted from each of the paragraphs of subsection (1) of the principal section if it takes effect on the termination of any interest or on the termination of any period, other than an interest or period terminating on or before the death ; but this paragraph shall not be taken to except a gift from paragraph (c) of that subsection by reason only that the gift is dependent on the widow or widower surviving the deceased for a specified period.
- 2 A gift is excepted from each of the paragraphs of that subsection if it depends on a condition which is not satisfied within twelve months after the death.
- 3 (1) A gift is excepted from paragraphs (a) and (b) of that subsection if it is less than the donor's full interest in the property given or is for a limited period or is defeasible or if it or any part of it is or may become applicable for other than charitable purposes or the purposes of a body falling within Schedule 25 to this Act.  
(2) For the purposes of this paragraph—
  - (a) any question whether a gift is less than the donor's full interest in the property given shall be decided as at a time twelve months after the death ; and
  - (b) any gift which has not been defeated at that time and is not defeasible after that time shall be treated as not being defeasible, whether or not it was capable of being defeated before that time.

#### PART II

##### ALLOCATION OF RELIEF

- 4 Any question how the reduction in estate duty resulting from the principal section and this Schedule is to be attributed to the duty payable respectively on property to which different persons become entitled on the death shall be determined in accordance with the following provisions of this Part of this Schedule ; and nothing in Part III of this Schedule shall be taken to affect that question.
- 5 The reduction referred to in the following provisions of this Part of this Schedule is the reduction in estate duty after allowing for any reduction in the estate rate and for any reduction attributable to section 16(3) of the Finance Act 1894.
- 6 No part of the reduction shall reduce the duty on chargeable property except in so far as the duty would be attributable to property specifically given but would fall on

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residue ; and in particular, where property given as a share in residue or in a fund is exempt property the reduction resulting from that property being exempt property shall not reduce the duty on any share in the residue or fund which is chargeable property.

- 7 Where any of the exempt property is property falling within paragraph (c) of subsection (1) of the principal section, the reduction shall be so made as to be most favourable to the widow or widower ; and subject thereto and to paragraph 6 above, the reduction shall be treated as reducing duty on property bearing its own duty (whether or not specifically given) before duty on property not bearing its own duty.

### PART III

#### ASCERTAINMENT OF EXEMPT AND CHARGEABLE PROPERTY

##### *Exempt and chargeable property*

- 8 Any question whether or to what extent the value attributable to any property is to be disregarded under the principal section shall be determined in accordance with the following provisions of this Schedule ; and in this Schedule " exempt property " means so much of any property as corresponds to the value to be so disregarded and "chargeable property" means the remainder of the property forming part of the estate.

##### *General principle*

- 9 Where it is material for any purpose which of two or more possible assets are taken to constitute exempt property—
- (a) such assets shall be taken to fall within paragraph (c) of subsection (1) of the principal section as are most favourable to the widow or widower, and any agreement between the widow or the widower and the Commissioners as to what assets will be most favourable shall be conclusive ;
  - (b) subject to sub-paragraph (a) above, property bearing its own duty shall be taken to be exempt property before property not bearing its own duty ; and
  - (c) subject to sub-paragraphs (a) and (b) above, each of the assets shall be so taken to the extent proportionate to its value.

##### *Small estates and separable property*

- 10 Where, under section 16(3) of the Finance Act 1894 (and apart from the principal section and this Schedule), any property is treated as an estate by itself the principal section and this Schedule shall have effect as if that property were not included in the property passing on the death.
- 11 Any property which, under section 16(3) of the Finance Act 1894 would fall to be treated as an estate by itself if its net value did not exceed that mentioned therein is in this Schedule referred to as separable property.

##### *Annuities*

- 12 For the purposes of the principal section and of this Schedule the value of any annuity or other periodical payment of any amount shall be taken to be the value of

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property needed to produce income of that amount; and the value of the property out of which the annuity or other sum is paid shall be taken to be reduced accordingly.

*Abatement not attributable to duty*

- 13 Where any gift would fall to be abated owing to the insufficiency of the estate and apart from any estate duty payable on the estate, so much only of any property comprised in the gift shall be taken into account under the following provisions of this Schedule as remains after the abatement.

*Abatement for estate duty*

- 14 So much only of the property passing on the death shall be exempt property as remains after making any deductions required by the following paragraphs.

- 15 There shall first be calculated the aggregate of the following values of the property which is specifically given or to which the widow or widower is specifically entitled—

- (a) the principal value of any property falling within paragraph (a) of subsection (1) of the principal section ;
- (b) the appropriate value of any property falling within paragraph (b) or (c) of that subsection ; and
- (c) the appropriate value of any property not falling within any of those paragraphs;

and for this purpose any debt incurred by the deceased for which no allowance is to be made under section 7(1) of the Finance Act 1894 shall be treated as property specifically given.

- 16 If the aggregate calculated under paragraph 15 above exceeds the principal value of the estate, the property specifically given (whether exempt or chargeable property) shall be taken to be reduced by such proportion thereof as would result in the aggregate being equal to that principal value; and in making the reduction due effect shall be given to any disposition under which any property is given.

*Residue*

- 17 If the aggregate calculated under paragraph 15 above is less than the principal value of the estate, so much of the remainder as is property falling within subsection (1) of the principal section shall be exempt property so far as—

- (a) it is property falling within paragraph (a) of that subsection; or
- (b) it is property falling within paragraph (b) or (c) of that subsection and does not, when added to the amount taken into account under paragraph 15(b) above, exceed the limit specified in paragraph (b) or (c) of that subsection.

*Appropriate value*

- 18 The appropriate value of any property bearing its own duty is its principal value.

- 19 Where property does not bear its own duty then—

- (a) if the property is property falling within paragraph (b) or (c) of subsection (1) of the principal section, its appropriate value is the aggregate of—

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- (i) its principal value, so far as it does not exceed the limit mentioned in that paragraph as reduced under paragraph 20 below ; and
- (ii) the grossed-up equivalent of the remainder ; and
- (b) if it is property not falling within that subsection its appropriate value is the grossed-up equivalent of its principal value.

20 Where property specifically given and bearing its own duty falls within paragraph (b) or (c) of subsection (1) of the principal section the limit mentioned therein shall for the purposes of paragraph 19 above be reduced by the principal value of that property (and accordingly shall for those purposes be nil if it is equalled or exceeded by that principal value).

#### *Grossed-up equivalent*

21 For the purposes of paragraph 19 above the grossed-up equivalent of the principal value or part of the principal value of any property is such amount as would, after deduction of estate duty at the appropriate rate, be equal to the principal value or part; and for this purpose the appropriate rate—

- (a) in relation to any property other than separable property, is the rate which would be the estate rate apart from the principal section and this Schedule ; and
- (b) in relation to separable property is the rate found by taking the amount of the estate duty that would be payable on that property (apart from the principal section and this Schedule) if no relief were given other than relief under section 16(3) of the Finance Act 1894 and dividing the amount so taken by the principal value of that property.

#### *Amounts payable out of different funds*

22 Where amounts are payable out of different funds the calculations required by the preceding provisions of this Part of this Schedule shall be made separately for each of those funds, with the necessary adjustments of the values and amounts referred to therein.

### **PART IV**

#### EFFECT OF CERTAIN EVENTS AFTER DEATH

##### *Failure of charitable object*

23 Where property given to a charity or property representing such property ceases at any time to be applicable to charitable purposes (without being replaced by other property) there shall be calculated the amount by which the estate duty chargeable on the death would have been increased if so much of the property falling within paragraph (b) of subsection (1) of the principal section and treated as exempt property as corresponds to the principal value at that time of the property ceasing to be so applicable had been treated as chargeable property ; and that amount shall be an amount of estate duty and the persons entitled to the property immediately after that time shall be accountable for it.

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*Works of national importance, etc., and timber*

- 24 Where objects to which section 40 of the Finance Act 1930 (objects of national, etc., interest) applies would, had they not been enjoyed in kind, have been property falling within subsection (1) of the principal section, then, to the extent that they would have been exempt property they shall remain exempt from estate duty notwithstanding that they are sold, or that an undertaking given under section 48(1) of the Finance Act 1950 has not been observed, but, in the case of objects which would have fallen within paragraph (c) of that subsection, only if they are sold, or the failure to observe the undertaking occurs, within the lifetime of the widow or widower ; and similarly with respect to timber, trees and wood exempted under section 61(5) of the Finance (1909-10) Act 1910.

*Deeds of family arrangement*

- 25 If not more than two years after the death any of the dispositions of the property of which the deceased was competent to dispose, whether effected by will or under the law relating to intestacies, or otherwise, are varied by a deed of family arrangement or similar instrument the principal section and this Schedule shall apply as if the variation made by the deed or other instrument had been effected by the deceased.

**PART V**

AMENDMENT, REPEALS AND INTERPRETATION

*Amendment of Finance Act 1954 s. 32(2)*

- 26 In section 32(2) of the Finance Act 1954 after the words " by reason only" there shall be inserted the words " of section 121 of and Schedule 26 to the Finance Act 1972 or ".

*Repeal of superseded provisions*

- 27 The enactments mentioned in Part VII of Schedule 28 to this Act are hereby repealed to the extent specified in the third column of that Part, except—
- (a) in relation to deaths occurring before 22nd March 1972 ; and
  - (b) in their application, by virtue of section 33(2) of the Finance Act 1951, to Government departments, local authorities and the other bodies mentioned therein.

*Interpretation*

- 28 In this Schedule " the principal section " means section 121 of this Act.
- 29 In the principal section and in this Schedule " charity " and "charitable" have the same meanings as in the Income Tax Acts and " gift" means—
- (a) any testamentary disposition ; and
  - (b) any disposition by virtue of which property passes on the death;
- whether the disposition is made by the deceased or any other person ; and " given " and " donor " shall be construed accordingly.
- 30 In this Schedule—

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" appropriate value " has the meaning assigned to it by paragraphs 18 and 19 above ;

" chargeable property " and " exempt property " have the meanings assigned to them by paragraph 8 above ;

" separable property " has the meaning assigned to it by paragraph 11 above.

- 31 Where the deceased's widow or widower is entitled to a joint tenancy of any property and becomes on the death beneficially entitled to a share of that property that share shall be treated for the purposes of the principal section and this Schedule in like manner as property given to or devolving on the widow or widower.
- 32 References in this Schedule to property specifically given are references to property given otherwise than as residue or a share in residue.
- 33 For the purposes of this Schedule any question whether property bears its own duty shall be determined as at the time of the death.