



# Capital Transfer Tax Act 1984

## 1984 CHAPTER 51

### PART V

#### MISCELLANEOUS RELIEFS

### CHAPTER V

#### MISCELLANEOUS

*Changes in distribution of deceased's estate, etc.*

#### **142 Alteration of dispositions taking effect on death**

- (1) Where within the period of two years after a person's death—
- (a) any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property comprised in his estate immediately before his death are varied, or
  - (b) the benefit conferred by any of those dispositions is disclaimed,
- by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions, this Act shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.
- (2) Subsection (1) above shall not apply to a variation unless an election to that effect is made by written notice given to the Board within six months after the date of the instrument, or such longer time as the Board may allow, by—
- (a) the person or persons making the instrument, and
  - (b) where the variation results in additional tax being payable, the personal representatives ;
- but personal representatives may decline to join in an election only if no, or no sufficient, assets are held by them in that capacity for discharging the additional tax.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Subsection (1) above shall not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making, in respect of another of the dispositions, of a variation or disclaimer to which that subsection applies.
- (4) Where a variation to which subsection (1) above applies results in property being held in trust for a person for a period which ends not more than two years after the death, this Act shall apply as if the disposition of the property that takes effect at the end of the period had had effect from the beginning of the period; but this subsection shall not affect the application of this Act in relation to any distribution or application of property occurring before that disposition takes effect.
- (5) For the purposes of subsection (1) above the property comprised in a person's estate includes any excluded property but not any property to which he is treated as entitled by virtue of section 49(1) above.
- (6) Subsection (1) above applies whether or not the administration of the estate is complete or the property concerned has been distributed in accordance with the original dispositions.
- (7) In the application of subsection (4) above to Scotland, property which is subject to a proper liferent shall be deemed to be held in trust for the liferenter.

#### **143 Compliance with testator's request**

Where a testator expresses a wish that property bequeathed by his will should be transferred by the legatee to other persons, and the legatee transfers any of the property in accordance with that wish within the period of two years after the death of the testator, this Act shall have effect as if the property transferred had been bequeathed by the will to the transferee.

#### **144 Distribution etc. from property settled by will**

- (1) This section applies where property comprised in a person's estate immediately before his death is settled by his will and, within the period of two years after his death and before any interest in possession has subsisted in the property, there occurs—
  - (a) an event on which tax would (apart from this section) be chargeable under any provision, other than section 64 or 79, of Chapter III of Part III of this Act, or
  - (b) an event on which tax would be so chargeable but for section 75 or 76 above or paragraph 16(1) of Schedule 4 to this Act.
- (2) Where this section applies by virtue of an event within paragraph (a) of subsection (1) above, tax shall not be charged under the provision in question on that event; and in every case in which this section applies in relation to an event, this Act shall have effect as if the will had provided that on the testator's death the property should be held as it is held after the event.

#### **145 Redemption of surviving spouse's life interest**

Where an election is made by a surviving spouse under section 47A of the Administration of Estates Act 1925, this Act shall have effect as if the surviving spouse, instead of being entitled to the life interest, had been entitled to a sum equal to the capital value mentioned in that section.

## **146 Inheritance (Provision for Family and Dependants) Act 1975**

- (1) Where an order is made under section 2 of the Inheritance (Provision for Family and Dependants) Act 1975 (" the 1975 Act") in relation to any property forming part of the net estate of a deceased person, then, without prejudice to section 19(1) of that Act, the property shall for the purposes of this Act be treated as if it had on his death devolved subject to the provisions of the order.
- (2) Where an order is made under section 10 of the 1975 Act requiring a person to provide any money or other property by reason of a disposition made by the deceased, then—
  - (a) if that disposition was a chargeable transfer and the personal representatives of the deceased make a claim for the purpose—
    - (i) tax paid or payable on the value transferred by that chargeable transfer (whether or not by the claimants) shall be repaid to them by the Board or, as the case may be, shall not be payable, and
    - (ii) the rate or rates of tax applicable to the transfer of value made by the deceased on his death shall be determined as if the values previously transferred by chargeable transfers made by him were reduced by that value ;
  - (b) the money or property shall be included in the deceased's estate for the purpose of the transfer of value made by him on his death.
- (3) Where the money or other property ordered to be provided under section 10 of the 1975 Act is less than the maximum permitted by that section, subsection (2)(a) above shall have effect in relation to such part of the value there mentioned as is appropriate.
- (4) The adjustment in consequence of the provisions of this section or of section 19(1) of the 1975 Act of the tax payable in respect of the transfer of value made by the deceased on his death shall not affect—
  - (a) the amount of any deduction to be made under section 8 of that Act in respect of tax borne by the person mentioned in subsection (3) of that section, or
  - (b) the amount of tax to which regard is to be had under section 9(2) of that Act; and where a person is ordered under that Act to make a payment or transfer property by reason of his holding property treated as part of the deceased's net estate under section 8 or 9 and tax borne by him is taken into account for the purposes of the order, any repayment of that tax shall be made to the personal representatives of the deceased and not to that person.
- (5) Tax repaid under paragraph (a)(i) of subsection (2) above shall be included in the deceased's estate for the purposes of the transfer of value made by him on his death; and tax repaid under that paragraph or under subsection (4) above shall form part of the deceased's net estate for the purposes of the 1975 Act.
- (6) Anything which is done in compliance with an order under the 1975 Act or occurs on the coming into force of such an order, and which would (apart from this subsection) constitute an occasion on which tax is chargeable under any provision, other than section 79, of Chapter III of Part III of this Act, shall not constitute such an occasion; and where an order under the 1975 Act provides for property to be settled or for the variation of a settlement, and (apart from this subsection) tax would be charged under section 52(1) above on the coming into force of the order, section 52(1) shall not apply.
- (7) In subsections (2)(a) and (5) above references to tax include references to interest on tax.

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- (8) Where an order is made staying or dismissing proceedings under the 1975 Act on terms set out in or scheduled to the order, this section shall have effect as if any of those terms which could have been included in an order under section 2 or 10 of that Act were provisions of such an order.
- (9) In this section any reference to, or to any provision of, the 1975 Act includes a reference to, or to the corresponding provision of, the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.

#### **147 Scotland: legitim**

- (1) Where a testator dies leaving a surviving spouse and a person under the age of 18 entitled to claim legitim, and provision is made in his will or other testamentary document for a disposition to his spouse which, if it could take effect, would leave insufficient property in the estate to satisfy the entitlement of that person in respect of legitim, the following provisions of this section shall apply.
- (2) Subject to subsections (3) and (4) below, tax shall be charged at the testator's death as if the disposition to the spouse did not include any amount in respect of legitim, but if within the period mentioned in subsection (6) below the person or persons concerned renounce their claim to legitim, tax shall be repaid to the estate calculated on the basis that the disposition to the spouse did include the amount renounced.
- (3) The executors or judicial factor of the testator may, in accordance with the provisions of this section, elect that subsection (2) above shall not apply but that subsection (4) below shall apply.
- (4) Tax shall be charged at the testator's death as if the disposition to the spouse had taken effect, but where the person or persons concerned claim legitim within the period mentioned in subsection (6) below, tax shall be charged on the amount so claimed calculated on the basis that the legitim fund had been paid out in full at the testator's death (excluding any part of the fund renounced before any claim has been made) and the tax chargeable thereon had been apportioned rateably among the persons entitled to claim legitim (excluding any who have renounced as aforesaid).
- (5) Where the executors or judicial factor of the testator decide to make an election under subsection (3) above they shall give notice in writing of that election to the Board within two years from the date of death of the testator or such longer period as the Board may permit.
- (6) For the purposes of subsections (2) and (4) above, a person shall be treated as having claimed legitim unless he has renounced his claim before attaining the age of 18 or he renounces his claim within two years of his attaining that age or such longer period as the Board may permit.
- (7) Where a person dies before attaining the age of 18 or before making a renunciation under subsection (6) above the provisions of this section shall apply in relation to that person's executors or judicial factor as they would have applied in relation to that person if that person had attained the age of 18 with the substitution of the date of death of that person for the date on which a person attained that age; but where the executors or factor renounce a claim to legitim in respect of a person the amount renounced shall not be treated as part of that person's estate.

- (8) Where subsection (2) above applies in relation to any estate, then notwithstanding anything in section 241 below the Board may repay tax under that subsection without limit of time.
- (9) Where subsection (4) above applies in relation to any estate, then notwithstanding anything in section 239 below a certificate of discharge may be given under that section in respect of the whole estate, and notwithstanding anything in section 240 below the giving of the certificate shall not preclude the Board from claiming tax under subsection (4) above without limit of time.