STATUTORY INSTRUMENTS

1987 No. 1130

INHERITANCE TAX

The Inheritance Tax (Double Charges Relief) Regulations 1987

Made - - - -	*30th June 1987*
Laid before the House of Commons	*1st July 1987*
Coming into force	*22nd July 1987*

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 104 of the Finance Act 1986(**a**), hereby make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Inheritance Tax (Double Charges Relief) Regulations 1987 and shall come into force on 22nd July 1987.

Interpretation

2. In these Regulations unless the context otherwise requires–

"PET" means potentially exempt transfer;

"property" includes part of any property;

"the 1984 Act" means the Inheritance Tax Act 1984(**b**);

"the 1986 Act" means Part V of the Finance Act 1986;

"section" means section of the 1984 Act.

Introductory

3. These Regulations provide for the avoidance, to the extent specified, of double charges to tax arising with respect to specified transfers of value made, and other events occurring, on or after 18th March 1986.

Double charges—potentially exempt transfers and death

4.—(1) This regulation applies in the circumstances to which paragraph (a) of section 104(1) of the 1986 Act refers where the conditions ("specified conditions") of paragraph (2) are fulfilled.

(2) The specified conditions to which paragraph (1) refers are–

(a) an individual ("the deceased") makes a transfer of value to a person ("the transferee") which is a PET,

(b) the transfer is made on or after 18th March 1986,

(c) the transfer proves to be a chargeable transfer, and

(a) 1986 c. 41.

(b) 1984 c. 51; by virtue of section 100(1) and (2) of the Finance Act 1986, on and after 25th July 1986 the Capital Transfer Tax Act 1984 may be cited as the Inheritance Tax Act 1984, and any reference in that Act to capital transfer tax is to have effect as a reference to inheritance tax, except where the reference relates to a liability arising before 25th July 1986.

(d) the deceased immediately before his death was beneficially entitled to property to which paragraph (3) refers.

(3) The property to which paragraph (2)(d) refers is property–

(a) which the deceased, after making the PET to which paragraph (2)(a) refers, acquired from the transferee otherwise than for full consideration in money or money's worth,

(b) which is property which was transferred to the transferee by the PET to which paragraph (2)(a) refers or which is property directly or indirectly representing that property, and

(c) which is property comprised in the estate of the deceased immediately before his death (within the meaning of section 5(1)), value attributable to which is transferred by a chargeable transfer (under section 4).

(4) Where the specified conditions are fulfilled there shall be calculated, separately in accordance with sub-paragraphs (a) and (b), the total tax chargeable as a consequence of the death of the deceased–

(a) disregarding so much of the value transferred by the PET to which paragraph (2)(a) refers as is attributable to the property, value of which is transferred by the chargeable transfer to which paragraph (3)(c) refers, and

(b) disregarding so much of the value transferred by the chargeable transfer to which paragraph (3)(c) refers as is attributable to the property, value of which is transferred by the PET to which paragraph (2)(a) refers.

(5)(a) Whichever of the two amounts of tax calculated under paragraph (4)(a) or (b) is the lower amount shall be treated as reduced to nil but, subject to sub-paragraph (b), the higher amount shall be payable,

(b) where the amount calculated under paragraph (4)(a) is higher than the amount calculated under paragraph (4)(b)–

(i) so much of the tax chargeable on the value transferred by the chargeable transfer to which paragraph (2)(c) refers as is attributable to the amount of that value which falls to be disregarded by virtue of paragraph (ii) shall be treated as a nil amount, and

(ii) for all the purposes of the 1984 Act so much of the value transferred by the PET to which paragraph (2)(a) refers as is attributable to the property to which paragraph (3)(c) refers shall be disregarded.

(6) Part I of the Schedule to these Regulations provides an example of the operation of this regulation.

Double charges—gifts with reservation and death

5.—(1) This regulation applies in the circumstances to which paragraph (b) of section 104(1) of the 1986 Act refers where the conditions ("specified conditions") of paragraph (2) are fulfilled.

(2) The specified conditions to which paragraph (1) refers are–

(a) an individual ("the deceased") makes a transfer of value by way of gift of property,

(b) the transfer is made on or after 18th March 1986,

(c) the transfer is or proves to be a chargeable transfer,

(d) the deceased dies on or after 18th March 1986,

(e) the property in relation to the gift and the deceased is property subject to a reservation (within the meaning of section 102 of the 1986 Act),

(f) (i) the property is by virtue of section 102(3) of the 1986 Act treated for the purposes of the 1984 Act as property to which the deceased was beneficially entitled immediately before his death, or,

(ii) the property ceases to be property subject to a reservation and is the subject of a PET by virtue of section 102(4) of the 1986 Act, and

(g) (i) the property is comprised in the estate of the deceased immediately before his death (within the meaning of section 5(1)) and value attributable to it is transferred by a chargeable transfer (under section 4), or

(ii) the property is property transferred by the PET to which sub-paragraph (f)(ii) refers, value attributable to which is transferred by a chargeable transfer.

(3) Where the specified conditions are fulfilled there shall be calculated, separately in accordance with sub-paragraphs (a) and (b), the total tax chargeable as a consequence of the death of the deceased–

(a) disregarding so much of the value transferred by the transfer of value to which paragraph (2)(a) refers as is attributable to property to which paragraph (2)(g) refers, and

(b) disregarding so much of the value of property to which paragraph (2)(g) refers as is attributable to property to which paragraph (2)(a) refers.

(4) Where the amount calculated under paragraph (3)(a) is higher than the amount calculated under paragraph (3)(b)–

(a) only so much of that higher amount shall be payable as remains after deducting, as a credit, from the amount comprised in that higher amount which is attributable to the value of the property to which paragraph (2)(g) refers, a sum (not exceeding the amount so attributable) equal to so much of the tax paid–

(i) as became payable before the death of the deceased, and

(ii) as is attributable to the value disregarded under paragraph (3)(a), and

(b) so much of the value transferred by the transfer of value to which paragraph (2)(a) refers as is attributable to the property to which paragraph (2)(g) refers shall (except in relation to chargeable transfers which were chargeable to tax, when made by the deceased, for the purposes of an occasion which occurred before the death of the deceased on which tax was chargeable under section 64 or 65) be treated as reduced to a nil amount for all the purposes of the 1984 Act.

(5) Where the amount calculated under paragraph (3)(a) is less than the amount calculated under paragraph (3)(b) the value of the property to which paragraph (2)(g) refers shall be reduced to nil for all the purposes of the 1984 Act.

(6) For the purposes of the interpretation and application of this regulation section 102 of and Schedule 20 to the 1986 Act shall apply.

(7) Part II of the Schedule to these Regulations provides examples of the operation of this regulation.

Double charges—liabilities subject to abatement and death

6.—(1) This regulation applies in the circumstances to which paragraph (c) of section 104(1) of the 1986 Act refers where the conditions ("specified conditions") of paragraph (2) are fulfilled.

(2) The specified conditions to which paragraph (1) refers are–

(a) a transfer of value which is or proves to be a chargeable transfer ("the transfer") is made on or after 18th March 1986 by an individual ("the deceased") by virtue of which the estate of the transferee is increased or by virtue of which property becomes comprised in a settlement of which the transferee is a trustee, and

(b) at any time before his death the deceased incurs a liability to the transferee ("the liability") which is a liability subject to abatement under the provisions of section 103 of the 1986 Act in determining the value transferred by a chargeable transfer (under section 4).

(3) Where the specified conditions are fulfilled there shall be calculated, separately in accordance with sub-paragraphs (a) and (b), the total tax chargeable as a consequence of the death of the deceased–

(a) disregarding so much of the value transferred by the transfer–

(i) as is attributable to the property by reference to which the liability falls to be abated, and

(ii) as is equal to the amount of the abatement of the liability, and

(b) taking account both of the value transferred by the transfer and of the liability.

(4)(a) Whichever of the two amounts of tax calculated under paragraph (3)(a) or (b) is the lower amount shall be treated as reduced to nil but, subject to sub-paragraph (b), the higher amount shall be payable,

(b) where the amount calculated under paragraph (3)(a) is higher than the amount calculated under paragraph (3)(b)–

(i) only so much of that higher amount shall be payable as remains after deducting, as a credit, from that amount a sum equal to so much of the tax paid–

(a) as became payable before the death of the deceased, and

(b) as is attributable to the value disregarded under paragraph (3)(a), and

(c) as does not exceed the difference between the amount of tax calculated under paragraph (3)(a) and the amount of tax that would have fallen to be calculated under paragraph (3)(b) if the liability had been taken into account, and

(ii) so much of the value transferred by the transfer to which paragraph (2)(a) refers–

(a) as is attributable to property by reference to which the liability is abated, and

(b) as is equal to the amount of the abatement of the liability,

shall (except in relation to chargeable transfers which were chargeable to tax, when made by the deceased, for the purposes of an occasion which occurred before the death of the deceased on which tax was chargeable under section 64 or 65) be treated as reduced to a nil amount for all the purposes of the 1984 Act.

(5) Where there is a number of transfers made by the deceased which are relevant to the liability to which paragraph (2)(b) applies the provisions of this regulation shall apply to those transfers taking them in reverse order of their making, that is to say, taking the latest first and the earliest last, but only to the extent that in aggregate the value of those transfers does not exceed the amount of the abatement to which paragraph (2)(b) refers.

(6) Part III of the Schedule to these Regulations provides examples of the operation of this regulation.

Double Charges—chargeable transfers and death

7.—(1) This regulation applies in the circumstances specified (by this regulation) for the purposes of paragraph (d) of section 104(1) of the 1986 Act (being circumstances which appear to the Board to be similar to those referred to in paragraphs (a) to (c) of that subsection) where the conditions ("specified conditions") of paragraph (2) are fulfilled.

(2) The specified conditions to which paragraph (1) refers are–

(a) an individual ("the deceased") makes a transfer of value to a person ("the transferee") which is a chargeable transfer,

(b) the transfer is made on or after 18th March 1986,

(c) the deceased dies within 7 years after that chargeable transfer is made, and

(d) the deceased immediately before his death was beneficially entitled to property to which paragraph (3) refers.

(3) The property to which paragraph (2)(d) refers is property–

(a) which the deceased, after making the chargeable transfer to which paragraph (2)(a) refers, acquired from the transferee otherwise than for full consideration in money or money's worth,

(b) which was transferred to the transferee by the chargeable transfer to which paragraph (2)(a) refers or which is property directly or indirectly representing that property, and

(c) which is property comprised in the estate of the deceased immediately before his death (within the meaning of section 5(1)), value attributable to which is transferred by a chargeable transfer (under section 4).

(4) Where the specified conditions are fulfilled there shall be calculated, separately in accordance with sub-paragraphs (a) and (b), the total tax chargeable as a consequence of the death of the deceased–

(a) disregarding so much of the value transferred by the chargeable transfer to which paragraph (2)(a) refers as is attributable to the property, value of which is transferred by the chargeable transfer to which paragraph (3)(c) refers, and

(b) disregarding so much of the value transferred by the chargeable transfer to which paragraph (3)(c) refers as is attributable to the property, value of which is transferred by the chargeable transfer to which paragraph (2)(a) refers.

(5)(a) Whichever of the two amounts of tax calculated under paragraph (4)(a) or (b) is the lower amount shall be treated as reduced to nil but, subject to sub-paragraph (b), the higher amount shall be payable,

(b) where the amount calculated under paragraph (4)(a) is higher than the amount calculated under paragraph (4)(b)–

(i) only so much of that higher amount shall be payable as remains after deducting, as a credit, from the amount comprised in that higher amount which is attributable to the value of the property to which paragraph (2)(d) refers, a sum (not exceeding the amount so attributable) equal to so much of the tax paid–

(a) as became payable before the death of the deceased, and

(b) as is attributable to the value disregarded under paragraph (4)(a), and

(ii) so much of the value transferred by the chargeable transfer to which paragraph (2)(a) refers as is attributable to the property to which paragraph (3)(c) refers shall (except for the purposes of an occasion which occurred before the death of the deceased on which tax was chargeable under section 64 or 65) be treated as reduced to a nil amount for all the purposes of the 1984 Act.

(6) Part IV of the Schedule to these Regulations provides an example of the operation of this regulation.

Equal calculations of tax—special rule

8. Where the total tax chargeable as a consequence of death under the two separate calculations provided for by any of regulation 4(4), 5(3), 6(3) or 7(4) is equal in amount the first of those calculations shall be treated as producing a higher amount for the purposes of the regulation concerned.

Schedule and saving

9. The Schedule to these Regulations shall have effect only for providing examples of the operation of these Regulations and, in the event of any conflict between the Schedule and the Regulations, the Regulations shall prevail.

D.B. Rogers
A.J.G. Isaac

30th June 1987 Two of the Commissioners of Inland Revenue

SCHEDULE

Regulation 9

INTRODUCTORY

1. This Schedule provides examples of the operation of the Regulations.

2. In this Schedule–

"cumulation" means the inclusion of the total chargeable transfers made by the transferor in the 7 years preceding the current transfer;

"GWR" means gift with reservation;

"taper relief" means the reduction in tax provided under section 7(4) of the 1984 Act, inserted by paragraph 2(4) of Schedule 19 to the 1986 Act.

3. Except where otherwise stated, the examples assume that–

—tax rates and bands remain as at 18 March 1987;

—the transferor has made no other transfers than those shown in the examples;

—no exemptions (including annual exemption) or reliefs apply to the value transferred by the relevant transfer; and

—"grossing up" does not apply in determining any lifetime tax (the tax is not borne by the transferor).

PART I

Regulation 4: Example

Jul 1987	A makes PET of £100,000 to B.	
Jul 1988	A makes gift into discretionary trust of £95,000.	Tax paid £750
Jan 1989	A makes further gift into same trust of £45,000.	Tax paid £6,750
Jan 1990	B dies and the 1987 PET returns to A.	
Apr 1991	A dies. His death estate of £300,000 includes the 1987 PET returned to him in 1990, which is still worth £100,000.	

First calculation under reg. 4 (4)(a)

Charge the returned PET in A's death estate and ignore the PET made in 1987.

		Tax
Jul 1987	PET £100,000 ignored	NIL
Jul 1988	Gift £95,000 Tax £1,500 less £750 already paid	£750
Jan 1989	Gift £45,000 as top slice of £140,000 Tax £13,500 less £6,750 already paid	£6,750
Apr 1991	Death estate £300,000 as top slice of £440,000	£153,000*
	Total tax due as result of A's death	£160,500

* In first calculation the tax of £153,000 on death estate does not allow for any successive charges relief (under S.141 IHTA 1984) that might be due in respect of "the returned PET" by reference to any tax charged on that "PET" in connection with B's death.

Second calculation under reg. 4 (4)(b)

Charge the 1987 PET and ignore the value of the returned PET in A's death estate.

		Tax
Jul 1987	PET £100,000. Tax with taper relief	£2,400
Jul 1988	Gift £95,000 as top slice of £195,000 Tax £34,000 less £750 already paid	£33,250
Jan 1989	Gift £45,000 as top slice of £240,000 Tax £20,000 less £6,750 already paid	£13,250
Apr 1991	Death estate £200,000 as top slice of £440,000	£111,000
	Total tax due as result of A's death	£159,900

Result *

First calculation gives higher amount of tax. So PET reduced to nil and tax on other transfers is as in first calculation.

* If, after allowing any successive charges relief, the second calculation gives higher amount of tax, 1987 PET will be charged and tax on other transfers will be as in second calculation.

PART II

Regulation 5: Example 1

Jan 1988	A makes PET of £150,000 to B.	
March 1992	A makes gift of land worth £200,000 into a discretionary trust of which he is a potential beneficiary. The gift is a "GWR".	Tax paid £19,500
Feb 1995	A dies without having released his interest in the trust. His death estate valued at £400,000, includes the GWR land curently worth £300,000.	

First calculation under reg. 5 (3)(a)

Charge the GWR land in A's death estate and ignore the GWR.

		Tax
Jan 1988	PET (now exempt)	NIL
Mar 1992	GWR ignored	NIL
Feb 1995	Death estate £400,000 Tax £144,000 less £19,500 already paid on GWR*	£124,500
	Total tax due as result of A's death	£124,500

* Credit for the tax already paid cannot exceed the amount of the death tax attributable to the value of the GWR property. In this example the tax so attributable is £108,000 (ie $\frac{144,000}{400,000} \times 300,000$). So credit is given for the full amount of £19,500.

Second calculation under reg. 5 (3)(b)

Charge the GWR and ignore the GWR land in the death estate.

		Tax
Jan 1988	PET (now exempt)	NIL
March 1992	GWR £200,000 Tax £39,000 less £19,500 already paid	£19,500
Feb 1995	Death estate £100,000 (ignoring GWR property) as top slice of £300,000	£48,000
	Total tax due as result of A's death	£67,500

Result

First calculation yields higher amount of tax. So the value of the GWR transfer is reduced to nil and tax on death is charged as in first calculation with credit for the tax already paid.

PART II

Regulation 5: Example 2

Apr 1987	A makes gift into discretionary trust of £150,000.	Tax paid £9,500
Jan 1988	A makes further gift into same trust of £50,000.	Tax paid £10,000
Mar 1993	A makes PET of shares valued at £150,000 to B.	
Feb 1996	A dies. He had continued to enjoy the income of the shares he had given to B (the 1993 PET is a GWR). His death estate, valued at £300,000, includes those shares currently worth £200,000.	

First calculation under reg. 5 (3)(a)

Charge the GWR shares in the death estate and ignore the PET.

		Tax
Apr 1987	Gift £150,000. No adjustment to tax as gift made more than 7 years before death	NIL
Jan 1988	Gift £50,000. No adjustment to tax as gift made more than 7 years before death	NIL
Mar 1993	PET £150,000 now reduced to NIL	NIL
Feb 1996	Death estate including GWR shares £300,000. No previous cumulation	£87,000
	Total tax due as result of A's death	£87,000

Second calculation under reg. 5 (3)(b)

Charge the PET and ignore the value of the GWR shares in the death estate.

		Tax
Apr 1987	Gift £150,000. No adjustment to tax as gift made more than 7 years before death	NIL
Jan 1988	Gift £50,000. No adjustment to tax as gift made more than 7 years before death	NIL
Mar 1993	GWR £150,000 as top slice of £350,000 (ie previous gifts totalling £200,000+£150,000)	£75,000
Feb 1996	Death estate (excluding GWR shares) £100,000 as top slice of £250,000 (the 1987 and 1988 gifts drop out of cumulation)	£43,000
	Total tax due as result of A's death	£118,000

Result

Second calculation yields higher amount of tax. So tax is charged by reference to the PET and the value of the GWR shares in the death estate is reduced to NIL.

PART III

Regulation 6: Example 1

Nov 1987	X makes a PET of cash of £95,000 to Y.
Dec 1987	Y makes a loan to X of £95,000.
May 1988	X makes a gift into discretionary trust of £20,000.
Apr 1993	X dies. His death estate is worth £182,000. A deduction of £95,000 is claimed for the loan from Y.

First calculation under reg. 6 (3)(a)

No charge on November 1987 gift, and no deduction against death estate.

		Tax
Nov 1987	PET ignored	NIL
May 1988	Gift £20,000	NIL
Apr 1993	Death estate £182,000 as top slice of £202,000	£39,800
	Total tax due as result of X's death	£39,800

Second calculation under reg. 6 (3)(b)

Charge the November 1987 PET, and allow the deduction against the death estate.

		Tax
Nov 1987	PET £95,000. Tax with taper relief	£600
May 1988	Gift £20,000 as top slice of £115,000. Tax with taper relief	£3,600
Apr 1993	Death estate (£182,000–loan of £95,000) £87,000 as top slice of £202,000	£32,300
	Total tax due as result of X's death	£36,500

Result

First calculation gives higher amount of tax. So debt is disallowed against death estate, but PET of £95,000 is not charged.

PART III

Regulation 6: Example 2

Aug 1988	P makes a PET of cash of £100,000 to Q.	
Sept 1988	Q makes a loan to P of £100,000.	
Oct 1989	P makes gift into discretionary trust of £98,000.	Tax paid £1,200
Nov 1992	P dies. Death estate £110,000 less allowable liabilities of £80,000 (which do not include the debt of £100,000 owed to Q).	

First calculation under reg. 6 (3)(a)

No charge on August 1988 PET, and no deduction against death estate for the £100,000 owed to Q.

		Tax
Aug 1988	PET ignored	NIL
Oct 1989	Gift £98,000 Tax (with taper relief) £1,920 less £1,200 already paid	£720
Nov 1992	Death estate £30,000 as top slice of £128,000	£9,000
	Total tax due as result of P's death	£9,720

Second calculation under reg. 6 (3)(b)

Charge the August 1988 PET, and allow deduction against death estate for the £100,000 owed to Q.

		Tax
Aug 1988	PET £100,000. Tax with taper relief	£1,800
Oct 1989	Gift £98,000 as top slice of £198,000 Tax (with taper relief) £28,100 less £1,200 already paid	£26,960
Nov 1992	Death estate £30,000–£100,000 (owed to Q)	NIL
	Total tax due as result of P's death	£28,760

Result

Second calculation gives higher amount of tax. So the PET to Q is charged, and deduction is allowed against death estate for the debt to Q.

PART III

Regulation 6: Example 3

1 May 1987	A makes PET to B of £95,000.	
1 Jan 1988	A makes PET to B of £40,000.	
1 Jul 1988	A makes gift into discretionary trust of £100,000.	Tax paid £1,500
1 Jan 1989	A makes PET to B of £30,000.	
1 Jul 1989	B makes a loan to A of £100,000.	
1 Dec 1990	A dies. Death estate £200,000, against which deduction is claimed for debt of £100,000 due to B.	

First calculation under reg. 6 (3)(a)

Disallow the debt and ignore corresponding amounts (£100,000) of PETs from A to B, starting with the latest PET.

		Tax
1 May 1987	PET now reduced to £65,000	NIL
1 Jan 1988	PET now reduced to NIL	NIL
1 Jul 1988	Gift into trust £100,000 as top slice of £165,000 Tax £25,000 less £1,500 already paid	£23,500
1 Jan 1989	PET now reduced to NIL	NIL
1 Dec 1990	Death estate £200,000 as top slice of £365,000	£98,000
	Total tax due as result of A's death	£121,500

Second calculation under reg. 6 (3)(b)

Allow the debt and charge PETs to B in full.

		Tax
1 May 1987	PET £95,000. Tax with taper relief	£1,200
1 Jan 1988	PET £40,000 as top slice of £135,000	£12,000
1 Jul 1988	Gift into trust £100,000 as top slice of £235,000 Tax £41,000 less £1,500 already paid	£39,500
1 Jan1989	PET £30,000 as top slice of £265,000	£15,000
1 Dec 1990	Death estate £100,000 as top slice of £365,000	£53,500
	Total tax due as result of A's death	£121,200

Result

First calculation yields higher amount of tax. So the debt is disallowed and corresponding amounts of PETs to B are ignored in determining the tax due as a result of the death.

PART III

Regulation 6: Example 4

1 Apr 1987	A makes gift into discretionary trust of £100,000.	Tax paid £1,500
1 Jan 1990	A makes PET to B of £60,000.	
1 Jan 1991	A makes further gift into same trust of £50,000.	Tax paid £8,000
1 Jan 1992	Same trust makes a loan to A of £120,000.	
1 Jun 1994	A dies. Death estate is £220,000, against which deduction is claimed for debt of £120,000 due to the trust.	

First calculation under reg. 6 (3)(a)

Disallow the debt and ignore corresponding amounts (£120,000) of gifts from A to trust, starting with the latest gift.

		Tax
1 Apr 1987	Gift now reduced to £30,000. No adjustment to tax already paid as gift made more than 7 years before death	NIL
1 Jan 1990	PET £60,000 as top slice of £90,000	NIL
1 Jan 1991	Gift now reduced to NIL. No adjustment to tax already paid	NIL
1 Jun 1994	Death estate £220,000 as top slice of £280,000 (the 1987 gift at £30,000 drops out of cumulation)	£77,000
		£77,000
	Less credit for tax already paid £1,500+£8,000	£9,500
	Total tax due as result of A's death	£67,500

Second calculation under reg. 6 (3)(b)

Allow the debt and no adjustment to gifts into the trust.

		Tax
1 Apr 1987	Gift £100,000. No adjustment to tax already paid as gift made more than 7 years before death	NIL
1 Jan 1990	PET £60,000 as top slice of £160,000. Tax with taper relief	£12,000
1 Jan 1991	Gift £50,000 as top slice of £210,000 Tax (with taper relief) £16,000 less £8,000 already paid	£8,000
1 June 1994	Death estate £100,000 as top slice of £210,000. (The 1987 gift drops out of cumulation. No credit for tax paid on that gift.)	£37,000
	Total tax due as result of A's death	£57,000

Result

First calculation yields higher amount tax. So the debt is disallowed and corresponding amounts of gifts into trust are ignored in determining the tax due as a result of the death.

PART IV

Regulation 7: Example

May 1986	S transfers into discretionary trust property worth £150,000. Immediate charge at the rates then in force.	Tax paid £13,750
Oct 1986	S gives T a life interest in shares worth £85,000. Immediate charge at the rates then in force.	Tax paid £19,500
Jan 1991	S makes a PET to R of £20,000.	
Dec 1992	T dies, and the settled shares return to S who is the settlor and therefore no tax charge on the shares on T's death.	
Aug 1993	S dies. His death estate includes the shares returned from T which are currently worth £75,000, and other assets worth £144,000.	

First calculation under reg. 7 (4)(a)

Charge the returned shares in the death estate and ignore the October 1986 gift. Tax rates and bands are those in force at the date of S's death.

		Tax
May 1986	Gift into trust made more than 7 years before death. So no adjustment to tax already paid but the gift cumulates in calculating tax on other gifts	NIL
Oct 1986	Gift ignored and no adjustment to tax already paid	NIL
Jan 1991	PET of £20,000 as top slice of (£150,000+£20,000) £170,000	£8,000
Nov 1993	Death estate £219,000 as top slice of £239,000 Tax £56,000 less £19,350 (part of tax already paid)*	£37,150
	Total tax due as result of S's death	£45,150

* £19,350 represents the amount of the death tax attributable to the value of the returned shares, and is lower than the amount of the lifetime tax charged on those shares. So credit against the death charge for the tax already paid is restricted to the lower amount.

Second calculation under reg. 7 (4)(b)

Charge the October 1986 gift and ignore the returned shares in the death estate. Tax rates and bands are those in force at the date of S's death.

		Tax
May 1986	Gift into trust made more than 7 years before death. So no adjustment to tax already paid but the gift is taken into acccount in calculating the tax on the other gifts	NIL
Oct 1986	Gift of £85,000 as top slice of £235,000 Tax (with taper relief) £7,100 less £19,500 already paid	NIL*
Jan 1991	PET of £20,000 as top slice of £255,000	£10,000
Aug 1993	Death estate (excluding the returned shares) £144,000 as top slice of £249,000 (£85,000+£20,000+£144,000)	£57,000
	Total tax due as a result of S's death	£67,000

* Credit for the tax already paid restricted to the (lower) amount of tax payable as result of the death. No repayment of the excess.

Result

Second calculation gives higher amount of tax. So tax is charged as in second calculation by excluding the shares from the death estate.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Finance Act 1986 by the provisions of section 104 empowered the Board of Inland Revenue to make provision by regulations for avoiding in certain circumstances double charges to inheritance tax in respect of transfers of value and other events occuring on or after 18 March 1986.

These Regulations provide for the avoidance of double charges arising in specified circumstances.

Regulation 1 provides the title and commencement date.

Regulation 2 contains definitions.

Regulation 3 describes the scope of the Regulations.

Regulation 4 provides for the avoidance of a double charge where property given by a potentially exempt transfer (PET) is subsequently returned (otherwise than for full consideration) by the donee to the transferor, and as a result of the transferor's death both that property and the PET become chargeable to tax. If charging the property as part of the death estate produces a higher amount of tax than would be payable if the charge on the PET was taken instead, the value transferred by the original transfer (the PET) is reduced by reference to the amount of the value of that property which is included in the chargeable transfer on the death. Conversely the PET is charged if that produces the higher amount of tax, with a corresponding reduction in the value of that property which is included in the chargeable transfer on the death. To avoid the value of the same property entering twice into the tax calculations this reduction applies for all purposes of the tax.

Regulation 5 provides for the avoidance of a double charge where there is a transfer of value by way of gift of property which is or subsequently becomes a chargeable transfer, and the property is (by virtue of the provisions relating to gifts with reservation) subject to a further transfer which is chargeable as a result of the transferor's death. As under regulation 4, whichever transfer produces the higher amount of tax as a result of the death remains chargeable and the value of the other transfer is reduced by reference to the value of the transfer which produced that amount. However this reduction in value does not apply for the purposes of any discretionary trust charges arising before the transferor's death if the transfer by way of gift was chargeable to tax when it was made. Further, provision is made for credit to be given on account of any tax already paid on the transfer by way of gift against so much of the tax payable on the other transfer as relates to the value of the property in question.

Regulation 6 provides for the avoidance of a double charge where a transfer of value is or subsequently becomes a chargeable transfer, and at the transferor's death his estate owes to the transferee a debt which (under the rules relating to such liabilities) falls to be abated or disallowed in determining the value of the estate chargeable on the death. Two separate calculations of tax payable as a result of the death are made. In the first, the amount of the transfer of value is reduced by the amount of the debt which is disallowed or abated, and in the second, the amount of the transfer of value and of the debt are both taken into account. The higher amount of tax is payable, but relief is given either by reducing the value of the transfer of value or by allowing the debt and charging the transfer of value in full. As under regulation 5, the reduction in value does not apply for the purposes of any charges on discretionary trusts arising before the death if the transfer of value was a chargeable transfer when it was made. Credit is allowed for some or all of the tax already paid on that transfer against the tax payable on the transferor's estate at death.

Regulation 7 provides for the avoidance of a double charge where property given by a transfer of value which is chargeable when made, is returned (otherwise than for full consideration) by the donee to the transferor, and that property is also chargeable as part of the transferor's estate on his death. It provides the same relief as is provided under regulation 4 in the case where the transfer of value was a PET when it was made, but credit is available for tax already paid. The reduction in value does not apply for the purposes of discretionary trust charges arising before the death.

Regulation 8 provides a rule to determine which of two equal amounts under regulation 4(4), 5(3), 6(3) or 7(4) is to be treated as the higher amount for the purposes of each of those regulations.

Regulation 9 introduces the Schedule which provides examples of the operation of these Regulations.