

Amendment	Page	Line
SC 401	129	20

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(Bristol South - Lab)

Amendment 401

Schedule 20, page 129, line 20 [Vol II], at end insert –
‘PART 6
CONDITIONAL EXEMPTION: RELIEF FROM CHARGES

(1) Section 79 of IHTA 1984 (subsection (3) of which provides for charges to tax where, in the case of settled property designated under section 31 on a claim under section 79, an event occurs that would be chargeable under section 32 or 32A if the claim had been under section 30) is amended as follows.

(2) After subsection (5) (amount on which tax charged under subsection (3)) insert –

“(5A) Where the event giving rise to a charge to tax under subsection (3) above is a disposal on sale, and the sale –

(a) was not intended to confer any gratuitous benefit on any person, and

(b) was either a transaction at arm’s length between persons not connected with each other or a transaction such as might be expected to be made at arm’s length between persons not connected with each other,

the value of the property at the time of that event shall be taken for the purposes of subsection (5) above to be equal to the proceeds of the sale.”

(3) For subsection (7) (which provides that the “relevant period” mentioned in subsection (6) begins with the latest of certain listed days and ends with the day before the event giving rise to the charge under subsection (3)) substitute –

“(7) In subsection (6) above “the relevant period” means the period given by subsection (7A) below or, if shorter, the period given by subsection (7B) below.

Amendment	Page	Line
SC 401	129	20

- (7A) The period given by this subsection is the period beginning with the latest of—
- (a) the day on which the settlement commenced,
 - (b) the date of the last ten-year anniversary of the settlement to fall before the day on which the property became comprised in the settlement,
 - (c) the date of the last ten-year anniversary of the settlement to fall before the day on which the property was designated under section 31 above on a claim under this section, and
 - (d) 13th March 1975,
- and ending with the day before the event giving rise to the charge.
- (7B) The period given by this subsection is the period equal in length to the number of relevant-property days in the period—
- (a) beginning with the day that is the latest of those referred to in paragraphs (a) to (d) of subsection (7A) above, and
 - (b) ending with the day before the event giving rise to the charge.
- (7C) For the purposes of subsection (7B) above, a day is a “relevant-property day” if at any time on that day the property was relevant property.”
- (4) After subsection (9) insert—
- “(9A) Subsection (9B) below applies where the same event gives rise—
- (a) to a charge under subsection (3) above in relation to any property, and
 - (b) to a charge under section 32 or 32A above in relation to that property.
- (9B) If the amount of each of the charges is the same, each charge shall have effect as a charge for one half of the amount that would be charged apart from this subsection; otherwise, whichever of the charges is

Amendment	Page	Line
SC 401	129	20

lower in amount shall have effect as if it were a charge the amount of which is nil.”’.

SUMMARY

1. This amendment corrects three existing defects in the rules for conditional exemption from IHT for heritage assets owned by trustees. If exemption is claimed and the assets are subsequently sold there could be a claw-back charge to recover the relief previously given and under current law this can be excessive because
 - no allowance is given for the vendor’s costs
 - the claw-back can be imposed in respect of a longer period than relief was in fact given for
 - there can be a double claw-back charge in some circumstances.

DETAILS

2. This amendment introduces a new Part 6 to Schedule 20:
3. Sub-paragraph (1) of the amendment provides for amendments to S79 Inheritance Tax Act 1984 (the provisions which relate to conditional exemption claimed by trustees).
4. Sub-paragraph (2) provides that where the conditionally exempt asset has been sold at arm’s length, the claw-back charge will be based on the proceeds of sale (ie. net of the vendor’s costs, as already applies when a claw-back charge is imposed on other owners by S32 or S32A IHTA), the periodic IHT charge on trust property.
5. Sub-paragraph (3) amends the rules for computing the claw-back charge where relief has previously been given against the periodic IHT charge on trust property. The charge is meant to reflect the duration over which relief was previously given: but under current law the “relevant period” for charging purposes can go back too far. The amendment inserts new subsections into

Amendment	Page	Line
SC 401	129	20

S79 IHTA to ensure that the charge is limited to periods for which relief has been given:

- new section 79(7A) covers the normal case where the trust property is “relevant property” (and so would be subject to the periodic charge if it were not conditionally exempt) throughout the period for which it has been conditionally exempt;
 - new subsection (7B) covers the possibility that it may, exceptionally, have been relevant property only for part of this period.
6. Subparagraph (4) reduces the total amount charged in circumstances where trust property has previously been conditionally exempted both under S32 or S32A (for example where property subject to “qualifying interest-in-possession” trusts has become held on “relevant property” trusts, creating a deemed transfer for IHT purposes) and also under S79 (for example where relief has been claimed against the periodic charge otherwise due on “relevant property”). As the law stands two claw-back charges are due. New S79(9A) identifies when the new relief applies, and new subsection (9B) quantifies the relief: the lower of the two charge is reduced to nil (or half of both is charged if they are identical) so in effect only the higher charge applies.

BACKGROUND

7. Trustees of trusts holding heritage property for which conditional exemption has not previously been claimed may wish to claim conditional exemption in future to secure relief against the tax charges which would otherwise arise following the changes in Schedule 20. This amendment addresses defects in the existing rules for such situations which would be likely to discourage them from claiming exemption – and so granting public access to their heritage property – if they were not corrected.