

Amendments to Clause 86: Estate duty: objects of national, scientific, historic or artistic Interest

Summary

1. The amendments to clause 86 make a number of changes to ensure that it operates as intended. The changes to Clause 86 are mainly of a technical nature to:
 - Clarify the position to ensure that when an item is lost, HMRC will only raise a single charge for Duty on the loss of the item; rather than a dual charge for the loss and breach of an undertaking;
 - provide that clause 86 applies to objects granted exemptions under the terms of the Finance Act 1975;
 - make sure that Schedule 6, paragraph 4(4) Inheritance Tax Act 1984 (IHTA) applies in cases within the new subsection (2A) of section 40 Finance Act 1930.
2. These amendments follow the various changes announced to the rules governing the interaction of Estate Duty (ED) and the Inheritance Tax Act at Budget 2016.

Details of the clause

3. Amendment 122 modifies the application of section 48 Finance Act 1950 by inserting into that section new subsection (3A). This provides that if there is a loss under new section 40(2A) Finance Act 1930 and there is a charge to Estate Duty under that section, then no ED will be chargeable for the breach of an undertaking under section 48 Finance Act 1950. This change will ensure, that HMRC only raise a charge for the loss and not for the breach on the failure to take reasonable steps to preserve an object which is implied by its loss.
4. Amendment 123 inserts new subsection (5A) into clause 86, to ensure that property that was given conditional exemption under the provisions of the Finance Act 1975 is brought within scope of the new provisions.
5. Amendment 124 amends paragraph 4(4) of Schedule 6 IHTA 1984 by inserting a reference to new section 40 (2A) Finance Act 1930. This ensures that, in identifying the last death on which objects passed (for the purposes of a charge to ED under new section 40(2A)) any death on or after 6 April 1976 is to be disregarded.
6. Amendments 125 and 126 insert into subsection (7) of the clause a reference to subsections (5A) and (6), and to section 35(2), so that the provisions amending section 35 of and Schedule 6 to IHTA 1984 will have effect in relation to chargeable events occurring on or after 16 March 2016.

Background note

7. As announced at Budget 2016, the Government will make changes in Finance Bill 2016 (FB16) to the current legislative provisions relating to Estate Duty. These amendment to clause 86 will ensure that the scope of the new provisions are clear.
8. Where the owner of an Estate Duty exempted object has undertaken to preserve the object and to retain it in the United Kingdom, the legislation as currently drafted would allow HMRC to make dual claims for a tax charge in the event of a loss: once for the breach of the undertaking to preserve the object and a second charge for the loss itself. It is not our intention to raise a double charge in these circumstances, but if the change is not made the legislation will leave room for doubt. The clause has now been amended to ensure that HMRC will only raise a charge for the loss and not for the breach on the failure to take reasonable steps to preserve an object which is implied by its loss.
9. Between March 1975 and April 1976 IHT (then capital transfer tax) operated under the terms of the Finance Act 1975. With the enactment of the Finance Act 1976 exemptions granted under the 1975 regime were not deemed to come under the auspices of the new Act but were left forming a discrete body of exempted property with its own taxing regime. The inheritance tax act 1984 contained special provisions to deal with that body of property, ensuring that if such property was given conditional exemption under the post-1976 regime, it was treated like an Estate duty exemption and this earlier exemption was made absolute by the later one.
10. The legislation as currently drafted in FB16 does not extend to objects granted exemption under the immediate post-1975 Finance Act regime. If the legislation is not amended then such objects will be treated differently with those exempted under the post-Finance Act 1976 regime. There is no good reason in principle to treat such objects differently. The clause has now been amended to ensure that property that was given conditional exemption under the provisions of the Finance Act 1975 is brought within scope of the provisions in clause 86.
11. The amendments also make minor consequential changes to take into account the other amendments.