

MODEL CLAUSE WHERE 10 PER CENT OR MORE OF AN ESTATE IS LEFT TO CHARITY: REDUCED RATE OF INHERITANCE TAX

STEP UK Technical Committee

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Following the entry into force of the Finance Act 2012 we set out below a model clause that can be used by persons wishing to leave a legacy qualifying for the reduced rate of inheritance tax to 36 per cent where 10 per cent or more of an estate is left to charity on death.

The Finance Act 2012, Schedule 33, inserts a new Schedule 1A into the Inheritance Tax Act 1984 making provision for the new relief.

The clause set out below is based on the draft clause submitted to HMRC in the course of the consultation process leading to the finalisation of the legislation.

MODEL CLAUSE

Leaving the minimum amount to charity required to qualify for the reduced rate of inheritance tax under Schedule 1A Inheritance Tax Act 1984

- 1.1 I give [name of charity] such a sum as together with any other gifts to charity made under my will or any codicil shall constitute a donated amount equal to ten per cent (10%) of the baseline amount in relation to the general component of my estate.
- 1.2 If relief under Schedule 1A Inheritance Tax Act 1984 (IHTA) shall have been abolished at the time of my death or if inheritance tax shall have been abolished at that time this legacy shall instead of the amount specified in clause 1.1 above be a sum equal to [] per cent ([]%) of the residue of my estate.
- 1.3 My executors in making payment of the legacy given by this clause:
 - 1.3.1 shall be entitled to accept in full discharge the receipt of the secretary, treasurer or other officer of the charity concerned;
 - 1.3.2 may appropriate assets not otherwise specifically bequeathed to satisfy (or partly satisfy) this legacy without the consent of any beneficiary under my will or any codicil.
- 1.4 I hereby confer on my executors the power in their absolute discretion to make or withdraw an election under paragraph 7 of Schedule 1A IHTA in relation to any other eligible part of my estate whether or not the general component is the qualifying component and to make or withdraw an election under paragraph 8 of that Schedule.

1.5 Terms in this clause have the same meaning as in Schedule 1A IHTA and the reference to a gift to charity means a gift attributable to property to which section 23 IHTA applies.

1.6 [The legacy given by this clause shall in no event:

1.6.1 be less than £[●] whether or not the lower rate of tax shall be applicable; and

1.6.2 exceed £[●] (the upper limit) even if in consequence of this restriction in the value of this legacy the lower rate of tax shall not apply. [If this proviso shall apply and in consequence the lower rate of tax shall not be applicable the amount of this legacy shall [be equal to the amount of the upper limit] [be reduced to £[●]] [lapse].]

The wording in clause 1.1 and 1.6 is offered by HMRC in the Inheritance Tax Manual at [IHTM45008](#).

HMRC has published guidance on the new relief at [IHTM45000](#).

The HMRC guidance refers to the HMRC online charitable legacy calculator available on the HMRC website which can be used to calculate the amount of the legacy that would be left to charity using the model clause. The actual amount of the legacy on the person's death will however depend on the value of the estate at death and the exemptions, reliefs and nil rate band then available. Click [here](#) for the calculator.

The following points should be noted in relation to the use of the model clause and the calculator.

In some cases it will only be possible to work out the amount of the legacy given by the model clause by using the calculator. This will be the case, for example, where there is more than one component in the estate on death and where there is an available nil rate band which needs to be allocated between the different components. In some cases initial calculations will be required, such as grossing up, before the calculator can be applied. The use of the model clause and the application of the calculator should be carefully considered in every case.

The calculator is designed to give the minimum amount required to be left to charity in order to attract the reduced rate of inheritance tax under Schedule 1A IHTA. The calculator will therefore not give a figure for a larger legacy.

In view of the fact that the calculator will be required in certain cases in order to work out the amount of the legacy left by the model clause it is important to consider the circumstances and assets when using the model clause. There may be cases where the model clause will not operate satisfactorily.

Drafting notes

Clause 1.1

The sub-clause set out below may be used in place of 1.1 above where it is desired to define the legacy under the will as 10 per cent (when added to other gifts to charity) not only of the general component but also of the survivorship component, the settled property component or

reservation of benefit property as well. The appropriate wording should be included to achieve the desired result. For example, if the legacy is to be defined by reference to the baseline amount of the general component and the survivorship component the brackets around the words “survivorship component” should be removed and the reference to the settled property component” and reservation of benefit property should be deleted. If reservation of benefit property is to be included in defining the amount of the legacy the additional words at the end of 1.5 should be added: and “reservation of benefit property” means property that forms part of my estate by virtue of s.102(3) Finance Act 1986 (Gifts with Reservation)

It should be noted that this alternative clause merely defines the amount of legacy under the will. Accordingly, in order for the relief to be available to other components in the estate and the gift with reservation property (if so desired) an election will need to be made under paragraph 7 Schedule 1A to merge the general component and the other relevant eligible part or parts.

I give [name of charity] such a sum as, together with any other gifts to charity made under my will or any codicil and also any property passing to charity forming part of such of the survivorship component and settled property component as are comprised in my estate, shall constitute a donated amount equal to ten per cent (10%) of the baseline amount in relation to the aggregate of the general component and [survivorship component] [and] [settled property component] [and reservation of benefit property] of my estate.

Clause 1.2

A legacy of a specified percentage of residue is given by this clause in substitution for the legacy in clause 1.1 if the relief in Schedule 1A or inheritance tax has been abolished by the time of the testator’s death. This default position should be carefully considered and a percentage other than ten per cent or some other figure may be felt appropriate.

Clause 1.6

This clause is entirely optional and is included purely to assist in addressing issues that may be relevant to the person making a will. The clause should be amended or omitted entirely as appropriate.

Firstly, clause 1.6.1 provides that the legacy shall not be less than a specified amount even if the relief is not applicable due to the net value of the estate being below the inheritance tax threshold with no inheritance tax therefore being payable. Clause 1.6.1 is included as there may be a wish to include the legacy or some part of the legacy irrespective of whether the relief applies or not.

Clause 1.6.2 is designed to cover the risk that due to a reduction in value of the estate between the making of the will and death, or for other reasons, the charity legacy may constitute too large a proportion of the estate. This could adversely affect the financial security of the deceased’s family or dependants following the death. Clause 1.6.2 therefore specifies a maximum figure. This may of course result in the reduced rate of inheritance tax not being available (because the legacy will be less than the 10 per cent proportion required) and the clause contains additional optional wording enabling the choice to be made that the legacy should either be equal to the

specified amount or be reduced or should lapse. The appropriate wording should be included to achieve the desired result.

Disclaimer:

The model clause and accompanying notes are made available by STEP to be used for general reference purposes when drafting wills and other testamentary documents. Specific facts and circumstances may mean that use of the model clause is inappropriate for a particular client or clients and could even engender losses. Careful and detailed consideration should therefore be given to its use in any particular case. STEP are not legal advisors and do not have or owe any duty of a legal or professional advisor. STEP and any person involved in the preparation of the model clause and accompanying notes shall not be liable for any loss to any person arising out of or in connection with the use of the model clause and accompanying notes.