

**HM REVENUE AND CUSTOMS  
RESOLUTIONS 55**

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Dawn Primarolo

(Bristol South - Lab)

**Amendment 355**

Schedule 20, page 112, line 10 [Vol II], leave out from ‘of ‘ to end of line 15 and insert ‘-

- (a) the trustees having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
- (b) the trustees having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
- (c) the trustees having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
- (d) the trustees having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or
- (e) the trustees having powers to the like effect as the powers mentioned in any of paragraphs (a) to (d) above.

**Amendment 356**

Schedule 20, page 112 [Vol II], leave out lines 26 to 29 and insert ‘as if, in subsection (2) above, before “which” there were inserted “the purposes of”.’.

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**Amendment 357**

Schedule 20, page 113, line 23 [Vol II], at end insert and

(d) as if, for the purposes of section 70(8) above as applied by this subsection, property -

(i) which is property to which section 71A above applies,

(ii) which, immediately before it became property to which section 71A applies, was property to which section 71D below applied,

and

(iii) which, by the operation of section 71D(5)(a) below, ceased on that occasion (“the 71D-to-71A occasion”) to be property to which section 71D below applied.

had become property to which section 71A above applies not on the 71D-to-71A occasion but on the relevant earlier occasion.

(4) In subsection (3)(d) above—

(a) “the relevant earlier occasion” means the occasion (or last occasion) before the 71D-to-71A occasion when the property became property to which section 71D below applied, but

(b) if the property, when it became property to which section 71D below applied, ceased at the same time to be property to which section 71 above applied without ceasing to be settled property, “the relevant earlier occasion means the occasion

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(or last occasion) when the property became property to which section 71 above applied.’.

**Amendment 358**

Schedule 20, page 113, line 27 [Vol II], at end insert—

**‘71D Age 18-to-25 trusts**

- (1) This section applies to settled property (including property settled before 22nd March 2006), but subject to subsection (5) below, if—
  - (a) the property is held on trusts for the benefit of a person who has not yet attained the age of 25,
  - (b) at least one of the person’s parents has died, and
  - (c) subsection (2) below applies to the trusts.
- (2) This subsection applies to trusts—
  - (a) established under the will of a deceased parent of the person mentioned in subsection (1)(a) above, or
  - (b) established under the Criminal Injuries Compensation Scheme, which secure that the conditions in subsection (6) below are met.
- (3) Subsection (4) has effect where -

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- (a) at any time on or after 22nd March 2006 but before 6th April 2008, or on the coming into force of paragraph 3(1) of Schedule{j1015s1} to the Finance Act 2006, any property ceases to be property to which section 71 above applies without ceasing to be settled property, and
- (b) immediately after the property ceases to be property to which section 71 above applies -
- (i) it is held on trusts for the benefit of a person who has not yet attained the age of 25, and
  - (ii) the trusts secure that the conditions in subsection (6) below are met.
- (4) From the time when the property ceases to be property to which section 71 above applies, but subject to subsection (5) below, this section applies to the property (if it would not apply to the property by virtue of subsection (1) above) for so long as -
- (a) the property continues to be settled property held on trusts such as are mentioned in subsection (3)(b)(i) above, and
  - (b) the trusts continue to secure that the conditions in subsection (6) below are met.
- (5) This section does not apply-
- (a) to property to which section 71A above applies,

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(b) to property to which section 70A or 71 above, or section 89 below, applies, or

(c) to settled property if a person is beneficially entitled to an interest in possession in the settled property and—

(i) the person became beneficially entitled to the interest in possession before 22<sup>nd</sup> March 2006, or

(ii) the interest in possession is an immediate post-death interest, or a transitional serial interest, and the person became beneficially entitled to it on or after 22<sup>nd</sup> March 2006.

(6) Those conditions are—

(a) that the person mentioned in subsection (1)(a) or (3)(b)(i) above (“B”), if he has not done so before attaining the age of 25, will on attaining that age become absolutely entitled to—

(i) the settled property,

(ii) any income arising from it, and

(iii) any income that has arisen from the property held on the trusts for his benefit and been accumulated before that time,

(b) that, for so long as B is living and under the age of 25, if any of the settled property is applied for the benefit of a beneficiary, it is applied for the benefit of B, and

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(c) that, for so long as B is living and under the age of 25, either—

(i) B is entitled to all of the income (if there is any) arising from any of the settled property, or

(ii) no such income may be applied for the benefit of any other person.

(7) For the purposes of this section, trusts are not to be treated as failing to secure that the conditions in subsection (6) above are met by reason only of -

(a) the trustees having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),

(b) the trustees having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,

(c) the trustees having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),

(d) the trustees having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or

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(e) the trustees having powers to the like effect as the powers mentioned in any of paragraphs (a) to (d) above.

(8) In this section “the Criminal Injuries Compensation Scheme” means -

- (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995,
- (b) arrangements made by the Secretary of State for compensation for criminal injuries in operation before the commencement of those schemes, and
- (c) the scheme established under the Criminal Injuries Compensation (Northern Ireland) Order 2002.

(9) The preceding provisions of this section apply in relation to Scotland -

- (a) as if, in subsection (2) above, before “which” there were inserted “the purposes of”, and
- (b) as if, in subsections (3)(b)(ii) and (4)(b) above, before “trusts” inserted “purposes of the”

**71E Charge to tax on property to which section 71D applies**

(1) Subject to subsections (2) to (4) below, there shall be a charge to tax under this section—

- (a) where settled property ceases to be property to which section 71D above applies, or

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- (b) in a case where paragraph (a) above does not apply, where the trustees make a disposition as a result of which the value of the settled property to which section 71D above applies is less than it would be but for the disposition.
- (2) Tax is not charged under this section where settled property ceases to be property to which section 71D above applies as a result of—
- (a) B becoming, at or under the age of 18, absolutely entitled as mentioned in section 71D(6)(a) above,
  - (b) the death, under the age of 18, of B,
  - (c) becoming, at a time when B is living and under the age of 18, property to which section 71A above applies, or
  - (d) being paid or applied for the advancement or benefit of B -
    - (i) at a time when B is living and under the age of 18, or
    - (ii) on B's attaining the age of 18.
- (3) Tax is not charged under this section in respect of—
- (a) a payment of costs or expenses (so far as they are fairly attributable to property to which section 71D above applies), or
  - (b) a payment which is (or will be) income of any person for any of the purposes of income tax or

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would be for any of those purposes be income of a person not resident in the United Kingdom if he were so resident,

or in respect of a liability to make such a payment.

- (4) Tax is not charged under this section by virtue of subsection (1)(b) above if the disposition is such that, were the trustees beneficially entitled to the settled property, section 10 or section 16 above would prevent the disposition from being a transfer of value.
- (5) For the purposes of this section the trustees shall be treated as making a disposition if they omit to exercise a right (unless it is shown that the omission was not deliberate) and the disposition shall be treated as made at the time or latest time when they could have exercised the right.

#### **71F Calculation of tax charged under section 71E in certain cases**

(1) Where -

- (a) tax is charged under section 71E above by reason of the happening of an event within subsection (2) below, and
- (b) that event happens after B has attained the age of 18, the tax is calculated in accordance with this section.

(2) Those events are—

- (a) B becoming absolutely entitled as mentioned in section 71D(6)(a) above,

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(b) the death of B, and

(c) property being paid or applied for the advancement or benefit of B.

(3) The amount of the tax is given by—

Chargeable amount x Relevant fraction x Settlement rate

(4) For the purposes of subsection (3) above, the “Chargeable amount” is—

(a) the amount by which the value of property which is comprised in the settlement and to which section 71D above applies is less immediately after the event giving rise to the charge than it would be but for the event, or

(b) where the tax is payable out of settled property to which section 71D above applies immediately after the event, the amount which, after deducting the tax, is equal to the amount on which tax would be charged by virtue of paragraph (a) above.

(5) For the purposes of subsection (3) above, the “Relevant fraction” is three tenths multiplied by so many fortieths as there are complete successive quarters in the period—

(a) beginning with the day on which B attained the age of 18 or, if later, the day on which the property became property to which section 71D above applies and

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- (b) (b) ending with the day before the occasion of the charge.
- (6) Where the whole or part of the Chargeable amount is attributable to property that was excluded property at any time during the period mentioned in subsection (5) above then, in determining the “Relevant fraction” in relation to that amount or part, no quarter throughout which that property was excluded property shall be counted.
- (7) For the purposes of subsection (3) above, the “Settlement rate” is the effective rate (that is to say, the rate found by expressing the tax chargeable as a percentage of the amount on which it is charged) at which tax would be charged on the value transferred by a chargeable transfer of the description specified in subsection (8) below.
- (8) The chargeable transfer postulated in subsection (7) above is one—
- (a) the value transferred by which is equal to an amount determined in accordance with subsection (9) below,
  - (b) which is made at the time of the charge to tax under section 71E above by a transferor who has in the period of seven years ending with the day of the occasion of the charge made chargeable transfers having an aggregate value equal to that of any chargeable transfers made by the settlor in the period of seven years ending with the day on which the settlement commenced, disregarding transfers made on that day, and
  - (c) on which tax is charged in accordance with section 7(2) above.

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(9) The amount referred to in subsection (8)(a) above is equal to the aggregate of—

- (a) the value, immediately after the settlement commenced, of the property then comprised in it,
- (b) the value immediately after a related settlement commenced, of the property then comprised in it, and
- (c) the value, immediately after it became comprised in the settlement, of any property which became so comprised after the settlement commenced and before the occasion of the charge under section 71E above (whether or not it has remained so comprised)].

**71G Calculation of tax charged under section 71E in all other cases**

(1) Where—

- (a) tax is charged under section 71E above, and
- (b) the tax does not fall to be calculated in accordance with section 71F above,

the tax is calculated in accordance with this section.

(2) The amount on which the tax is charged is -

- (a) the amount by which the value of property which is comprised in the settlement and to which section 71D above applies is less immediately after the event giving rise to the charge than it would be but for the event, or

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(b) where the tax is payable out of settled property to which section 71D above applies immediately after the event, the amount which, after deducting the tax, is equal to the amount on which tax would be charged by virtue of paragraph (a) above.

(3) The rate at which the tax is charged is the rate that would be given by subsections (6) to (8) of section 70 above -

(a) if the reference to section 70 above in subsection (8)(a) of that section were a reference to section 71D above,

(b) if the other references in those subsections to section 70 above were references to section 71E above, and

(c) if, for the purposes of section 70(8) above, property—

(i) which is property to which section 71D above applies,

(ii) which, immediately before it became property to which section 71D above applies, was property to which section 71 applied, and

(iii) which ceased on that occasion to be property to which section 71 above applied without ceasing to be settled property,

had become property to which section 71D above applies not on that occasion but on the occasion (or last occasion) before then when it became property to which section 71 above applied.”.

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**Amendment 365**

Schedule 20, page 119, line 11 [Vol II], after '71A' insert 'or 71D'.

**Amendment 366**

Schedule 20, page 119, line 18 [VolII], after '71A' insert 'or 71D'.

**Amendment 367**

Schedule 20, page 119, line 39 [Vol II], after '71A' insert 'or 71D'.

**Amendment 369**

Schedule 20, page 120, line 42 [Vol II], after '71A' insert 'or 71D'.

**Amendment 371**

Schedule 20, page 122, line 27 [Vol II], after '71A' insert '71D'.

**Amendment 372**

Schedule 20, page 124, line 28 [Vol II], after '71A' insert '71D'.

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## **SUMMARY**

1. These amendments supplement the provision in Schedule 20 for “trusts for bereaved minors” terminating at age 18 (TBMs,) with broadly parallel provision for “age 18-to-25” trusts: that is to say, trusts created in similar circumstances but capable of continuing to age 25. In either case, the trust assets will be exempt from the inheritance tax periodic charge on trust assets so long as the beneficiary is under 18, and will be exempt from the exit charge on trust assets if the beneficiary takes the trust assets absolutely at that age. But IHT charges will start to apply to assets in an “age 18-to-25 trust” if it continues beyond age 18. They will be charged on exit and calculated on the same basis as the mainstream exit charge, so in practice the assets will be subject to “seven years’ worth” of charge if the trust continues for the maximum duration up to age 25. A claw-back charge will apply (as it does to assets leaving an accumulation and maintenance trusts or TBMs) to assets leaving an “age-to-25” trust in an irregular way.

2. The new treatment will also apply to existing “accumulation and maintenance” trusts which satisfy relevant parts of the “age 18-to-25” conditions by 6 April 2008. This applies to these pre-Budget trusts even where, under the new rules, they would not qualify because they were not set up under the will of a deceased parent.

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### **DETAILS**

1. Amendment 355 expands the provision at new section 71A(4) Inheritance Act 1984 (IHTA) (inserted by paragraph 1 of Schedule 20). This currently allows a trust to confer the standard power of advancement at section 32 of the Trustee Act 1925 without breaking the rules for a TBM: as amended this will extend to a power of advancement which has been modified to remove the limits imposed by the Trustee Act. This will bring section 71A (for TBMs) into line with the equivalent proposition introduced below for “age 18 – to – 25 trusts” (where settlors will commonly wish to provide such a modified power of advancement). Amendment 356 removes a modification for Scotland which is no longer required.
2. Amendment 357 adds further provision to new section 71B Inheritance Tax Act 1984 (IHTA), inserted by paragraph 1 of Schedule 20. Section 71B imposes a clawback charge (on the same lines as that currently applying to an “accumulation and maintenance” trust) when, exceptionally, property leaves a trust for a bereaved minor, or (if these amendments are made) an “age 18-to-25 trust”, under irregular circumstances. The amendment reflects the fact that the same trust may have qualified as a TBM and as an “18-to-25” trust at different times: the amendment effectively provides for all such periods to be taken into account when quantifying the clawback charge.
3. Amendment 358 adds the substantive new provision for “age 18-to-25 trusts” to paragraph 1 of Schedule 20, inserting new sections 71D-71G IHTA.

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4. New section 71D sets out the tests which an “age 18-to-25 trust” has to satisfy: these run parallel to those for a TBM (introduced as new section 71A IHTA, also inserted by paragraph 1 of Schedule 20), except that the trusts assets are held on trusts for a person who has not yet reached age 25 (rather than age 18 for a TBM).
5. Subsections (1) and (2) provide for new trusts arising on or after 22 March 2006: subsections (3) and (4) provide for pre-Budget “accumulation and maintenance” trusts which satisfy relevant aspects of the “age 18-to-25” tests as at 6 April 2008 even where they would not meet all of the conditions if they were set up on or after Budget Day. Subsection (5) sets the order of precedence for trusts which satisfy more than one set of rules giving special IHT treatment. Subsection (6) sets out the tests (referred to in subsections (2) and (4) which have to be satisfied by any benefits arising under an “age 18-to-25 trust” before a beneficiary reaches age 25. Subsection (7) - (9) provide for the interaction where trusts contain powers of advancement in standard terms, for interpretation, and for the modifications necessary for Scotland – all in equivalent terms to that provided at section 71A for TBMs.
6. New section 71E applies an IHT charge (calculated in accordance with new sections 71F or 71G) where assets cease to be subject to “age 18-to-25 trusts” after the beneficiary has passed the age of 18. No charge is due where the beneficiary takes the trust assets at age 18 (or has died before that age).
7. New section 71F sets out the charge applying when assets leave an “age 18-to-25 trust” under regular circumstances – e.g. they are paid out to the beneficiary at or before age 25, applied for his benefit below that age, or disposed of under default provisions on his death below that age. The charge is calculated on the same basis as the

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exit charge under the mainstream IHT rules for property held in trust, applied from the time at which the beneficiary reaches 18.

8. New section 71G sets out the charge applying when assets leave an “age 18-to-25 trust” in other circumstances. It is calculated on the same basis as the charge on assets leaving a TBM in irregular circumstances, and is based on the existing clawback charge applying to assets leaving an “accumulation and maintenance” trust in a comparable way.
9. Amendments 365 to 367, 369, 371 and 372 provide for consequential amendments, inserting references to “age 18-to-25 trusts” alongside existing references to TBMs.

## **BACKGROUND NOTE**

10. Existing IHT rules provide special treatment for “accumulation and maintenance” (A&M) trusts. These trusts can be created at any time for beneficiaries aged under 25, so long as the beneficiaries will take the trust assets, or an interest-in-possession in them under continuing trusts, not later than age 25. A clawback charge applies if trust assets leave such a trust in a way inconsistent with these tests.

11. For trusts created on or after 22 March 2006, Schedule 20 as first introduced restricts this treatment to trusts which are created on the death of a parent (TBMs), and which provide for the beneficiary to take absolute entitlement to the trust assets at age 18. Transitional provisions

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continue the current treatment for existing “A&M” trusts up to 6 April 2008, and beyond that date if the trusts applying at that time provide for the remaining beneficiaries to take the trust assets absolutely at age 18.

12. These amendments allow the new rules for TBMs to apply in modified form to trusts which are capable of continuing beyond 18, so long as the beneficiary will take the trust assets absolutely no later than age 25. Existing “A&M” trusts are eligible for the same treatment from 6 April 2008 onwards if the trusts applying at that date satisfy the same test.