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Amendment 398

Schedule 20, page 126, line 19 [Vol II], leave out ‘In’.

Amendment 399

Schedule 20, page 126, line 19 [Vol II], at end insert ‘is amended as follows—

(2) In subsection (1)—

(a) for “This section applies” substitute “Subsection (2) below applies”, and

(b) in paragraph (a), for “(apart from this section)” substitute “(apart from subsection (2) below)”.

Amendment 400

Schedule 20, page 126, line 25 [Vol II], at end insert—

‘(4) In subsection (2), for “this section” (in both places) substitute “this subsection”.

(5) After subsection (2) insert—

“(3) Subsection (4) below applies where—

(a) a person dies on or after 22nd March 2006,

(b) property comprised in the person’s estate immediately before his death is settled by his will, and

(c) within the period of two years after his death, but before an immediate post-death interest or a disabled person’s interest has subsisted in the property, there occurs an event that involves causing property

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comprised in the testator's estate to be held on trusts that would, if they had in fact been established by the testator's will, have resulted in—

- (i) an immediate post-death interest subsisting in the property, or
- (ii) section 71A or 71D above applying to the property.

(4) Where this subsection applies by virtue of an event—

- (a) this Act shall have effect as if the will had provided that on the testator's death the property should be held as it is held after the event, but
- (b) tax shall not be charged on that event under any provision of Chapter 3 of Part 3 of this Act''.

SUMMARY

1. This technical amendment concerns the inheritance tax (IHT) provisions for distributions from discretionary trusts set up by will. Where the trustees make any changes to the trust property within two years of the testator's death, section 144 applies the Inheritance Tax Act 1984 (IHTA) as if the will had provided that, on the testator's death, the property had passed according to the changes. This amendment ensures this treatment continues where the changes would create a trust for a bereaved minor (TBM), an age 18-to-25 trust or an immediate post-death interest (IPDI) if they had been established by the testator's will.

DETAILS

2. Amendments 398 and 399 ensure that the existing provisions of section 144 IHTA apply independently to the new provisions introduced by amendment 400.

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3. Amendment 400 inserts new subsections (3) and (4) into section 144 IHTA. Subsection (3) provides that subsection (4) applies where
- a person dies on or after 22 March 2006,
 - they settle property in their will, and
 - the trustees use powers in the trust in a way that would have created a TBM, an age 18-to-25 trust or an IPDI if they had been created by the testator's will.
4. Subsection (4) provides that, in those circumstances, the IHTA will apply as if the will had provided that, on the testator's death, the property had passed according to the appointment, and that tax will not be charged under Chapter 3 of Part 3 IHTA.

BACKGROUND

5. Schedule 20 to the Finance (No.2) Bill 2006 introduced certain new categories of trusts – TBMs, age 18-to-25 trusts and IPDIs – that can only be made under a will or intestacy. So, without express provision, an appointment out of a discretionary trust settled by will could not create one of these new trusts. It would not trigger the event required by section 144(1) IHTA and could not therefore be read back into the testator's will. These amendments address that.