

Stop Press - Finance (No. 2) Bill 2006

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In our Stop Press of 12 June 2006 we summarised the Government's proposed amendments to the provisions of the Finance (No. 2) Bill 2006. Further amendments have been now been proposed as part of the Report Stage process – this is the last practical opportunity for changes to be made before Royal Assent so it is highly unlikely that there will be any further changes.

Overview

The proposed Government amendments which were tabled on 28 June 2006 primarily affect life interest trusts established before 22 March 2006. However, amendments to the rules relating to trusts for the disabled and bereaved minor's trusts have also been proposed.

Existing life interest trusts

As a result of the Budget, transitional rules apply to life interests in existence on 22 March 2006. Existing life interests, along with any similar interests substituted before 6 April 2008, will be 'transitional serial interests' and will continue to enjoy the pre-22 March 2006 inheritance tax treatment afforded to life interest trusts.

The original proposals introduced by the Finance (No.2) Bill 2006 meant that this treatment would not be available in the future unless the life interest in existence on 22 March 2006 terminated prior to 6 April 2008. In short, where a life tenant died after this date and his or her spouse or civil partner took a successive life interest, no exemption from inheritance tax would have been available. Instead, inheritance tax was to be payable at full death rates and, thereafter, the settled property would have been subject to periodic inheritance tax charges. Exemption from inheritance tax would only have been available where the surviving spouse or civil partner took outright and the trust was broken.

The effect of the Report Stage amendments is to reinstate the position that applied pre-Budget for deaths **after** 6 April 2008. This is very welcome news for a wide range of trusts where the original changes would have caused real hardship for the surviving spouse or civil partner, especially where the trust involved remarried spouses where capital was set to pass to children from the first marriage on a second death, or in cases where the trustees had no power to advance capital, as was the case in 'old-fashioned' marriage settlements.

Once more, a level playing field now exists in respect of this exemption from inheritance tax as between trusts established by will (whether pre or post-Budget) and pre-Budget lifetime trusts, although successive interests to spouses created after 6 April 2008 in the lifetime of the life tenant whose interest was in existence on 22 March 2006 will not qualify for exemption when an existing trust is being reorganised.

Disabled trusts

Further amendments make it clear that where a disabled person becomes entitled to a life interest in settled property on or after 22 March 2006, but that property was settled before 22 March 2006, the assets will be treated as being owned by the disabled person. This brings the treatment of a life interest coming into existence in these circumstances in line with the treatment of trusts for disabled persons being established after 22 March 2006.

Trusts for bereaved minors

Trusts for bereaved minors can be established by will by the 'parent' of a 'bereaved minor'. A bereaved minor is a child one of whose parents has died. The definition of 'parent' has been broadened to include any adult who has parental responsibility for a child by virtue of the Children Act 1989.

This means that a trust for bereaved minors can be established by a child's legal guardian.

Conclusion

Whilst these changes are welcome, and go some way to further alleviating the concerns of many clients, the provisions of the Finance (No. 2) Bill 2006 still leave a large number of families in a considerably worse position than before, with opportunities to provide for future generations in both a secure and tax efficient manner seriously curtailed.

Authors

Judith Ingham

CONSULTANT | LONDON

Private client and tax

 +44 20 7597 6063

 judith.ingham@withersworldwide.com

John Riches

CONSULTANT | LONDON

Private client and tax

 +44 20 7597 6109

 john.riches@withersworldwide.com