

CHAPTER 2 Settlements on children generally

Interpretation and application). ITA67 s443(2), (3) and (5), s445 and s447; FA95 s12(1)(a)(ii) and (c)(i) and (ii) 794.—(1) In this Chapter—

“income” (1), 796 (2)(b) and subsections (4) and (5) of section 797 it is immediately preceded by “as” or “that person's” and except also in section 798) includes any income chargeable to income tax by deduction or otherwise and any income which would have been so chargeable if it had been received in the State by a person resident or ordinarily resident in the State;

“settlement” includes any disposition, trust, covenant, agreement or arrangement, and any transfer of money or other property or of any right to money or other property.

(2) This Chapter shall apply to every settlement wherever and whenever made or entered into.

(3) This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the State, and references in this Chapter to income shall be construed accordingly.

(4) This Chapter shall not apply to any income which, by virtue or in consequence of a settlement and during the life of the settlor, is in any year of assessment paid to or for the benefit of a minor, not being a child of the settlor, if such minor is permanently incapacitated by reason of mental or physical infirmity.

(5) For the purposes of this Chapter, the following provisions shall apply in relation to the construction of “irrevocable instrument”:

(a) an instrument shall not be an irrevocable instrument if the trusts of the instrument provide for all or any one or more of the following matters—

(i) the payment or application to or for the settlor for the settlor's own benefit of any capital or income or accumulations of income in any circumstances whatever during the life of a person (in this paragraph referred to as a “beneficiary”) to or for the benefit of whom any income or accumulations of income is or are or may be payable or applicable under the trusts of the instrument,

(ii) the payment or application during the life of the settlor to or for the husband or wife of the settlor for his own or her own benefit of any capital or income or accumulations of income in any circumstances whatever during the life of any beneficiary,

(iii) the termination of the trusts of the instrument by the act or on the default of any person, and

(iv) the payment by the settlor of a penalty in the event of the settlor failing to comply with the

instrument;

(b) an instrument shall not be prevented from being an irrevocable instrument by reason only that the trusts of the instrument include any one or more of the following provisions—

(i) a provision under which any capital or income or accumulations of income will or may become payable to or applicable for the benefit of the settlor or the husband or wife of the settlor, on the bankruptcy of a person (in this paragraph referred to as a “beneficiary”) to or for the benefit of whom any income or accumulations of income is or are or may be payable or applicable under the trusts of the instrument,

(ii) a provision under which any capital or income or accumulations of income will or may become payable to or applicable for the benefit of the settlor or the husband or wife of the settlor, in the event of any beneficiary making an assignment of or charge on such capital or income or accumulations of income, and

(iii) a provision for the termination of the trusts of the instrument in such circumstances or manner that such termination would not, during the life of any beneficiary, benefit any person other than that beneficiary or that beneficiary's husband, wife or issue;

(c) “irrevocable instrument” includes instruments whenever made.