HMRC - CG34750 - Settlor Trusts: Interest In The Settlement

TCGA92/S77 (3) & (8)

A settlor has an interest in the settlement if

all or some of the settlement property or derived property is, or may at any time become, applicable for the benefit of the settlor or the settlor’s spouse or civil partner or (from 6 April 2006 whenever the settlement was made) any minor child or step-child who is unmarried or without a civil partner, or

the settlor or the settlor’s spouse or civil partner or such a child enjoys a benefit deriving directly or indirectly from the settlement property or derived property.

Type (a) covers all cases where the settlor or the spouse or civil partner or minor child has a present or future interest in income or capital under the settlement, whether vested or contingent (see definitions in TSEM/Glossary). This even includes cases, except those within CG34760, where it is far from likely that they will actually receive anything. See CG34770 - CG34774 on the relevance of HMRC Trusts and earlier rulings. The size of the interest is irrelevant. It includes cases where the settlor has lent money to the trustees of the settlement, see Jenkins v CIR 26TC265.

For the meaning of derived property see West v Trennery 76TC713. The principal type of derived property is income from the settlement and property representing that income. But there were changes to section 77 in FA95. ‘Derived property’ the House of Lords held, is not limited to property or income which was, in the relevant year of assessment, comprised in the settlement with the chargeable gains. That construction would deprive section 77(8) of any force and the intention of Parliament must have been to cover property which is settled property, and is derived from settled property comprised in the settlement with the chargeable gains, but is not itself still comprised in that settlement.

In that case trustees of the settlement in year 1 had borrowed money worth 75% of the unquoted shares they held, and advanced almost all that money to the trustees of another settlement under which the settlor could benefit. Just before the end of year 1 the settlor’s interest in the first settlement was terminated. At the beginning of year 2 they sold the shares. The money in the second settlement was derived property in relation to the first settlement because it was the proceeds of borrowing which was a way of turning the shares to account and the shares were still in the first settlement.

Spouse and civil partner and minor child are explained in CG34753.

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