HMRC - CG34753 - Settlor Trusts: Spouse Or Civil Partner Or Minor Child

TCGA92/S77 (3) and (3B)

TCGA92/S77 was amended by FA95. Broadly speaking this excluded from the description ‘spouse’ potential spouses and certain cases of separation. Civil partners capable of receiving benefits, or actually receiving benefits, were brought into TCGA92/S77 by the Civil Partnerships Regulations 2005 with effect from 5/12/05. The following persons are not to be regarded as spouses or civil partners for the purposes of TCGA92/S77 -

a person to whom the settlor is not presently married but might marry later. (This reverses the decision in CIR v Tennant, 24TC215.),

a person who is not currently the settlor’s civil partner but might become such,

a spouse or civil partner from whom the settlor is separated

\* under a court order or \* under a separation agreement or \* in other circumstances such that the separation is likely to be permanent,

a widow, widower or surviving civil partner of the settlor. If the person who currently is the spouse or civil partner of the settlor can only benefit after the death of the settlor, he or she is disregarded for the purposes of Section 77. This confirms the decision in Lord Vesty’s Executors v CIR, 31TC1.

Settlements for minor children who are unmarried or without a civil partner were brought in with effect from 6 April 2006. The possibility that at some time in the future the settlement might fall into section 77 because a child of the settlor might benefit, or a named child might become the settlor’s step-child, is disregarded where the settlor has no relevant children at present.

Interests of minor children are disregarded to the extent that for the year there is a claim for vulnerable beneficiary treatment, see CG36741.

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