

# **Notes for Guidance - Taxes Consolidation Act 1997**

**Finance Act 2021 edition**

## **Part 32**

### **Estates of Deceased Persons in Course of Administration and Surcharge on Certain Income of Trustees**

**December 2021**



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Part 32 Estates of Deceased Persons in Course of Administration and Surcharge on Certain Income of Trustees

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## PART 32 ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION AND SURCHARGE ON CERTAIN INCOME OF TRUSTEES

### CHAPTER 1

#### *Estates of deceased persons in course of administration*

#### **Overview**

This Chapter is concerned with the liability to income tax of the residuary beneficiaries on their share of the residuary income of a deceased person's estate.

Residuary income is, in effect, the total income of the estate received by the personal representatives during the period of the administration of the estate, reduced by any income paid to non-residuary beneficiaries and by certain other annual payments and expenses properly chargeable to income.

The treatment of residuary income payable to a residuary beneficiary differs depending on whether he/she has an absolute (*section 801*) or limited interest (*section 800*) in the residue. There is also a distinction made between the way the residuary income of a foreign estate is taxed compared with an Irish estate.

The personal representatives of a deceased person are taxable in their representative capacity on the income of the estate during the period of administration. The rate of income tax applicable is the standard rate. Higher rate tax is not chargeable on a personal representative.

Any distribution of income from an estate during or at the end of the administration period is received by the beneficiary concerned as taxed income where the estate is an Irish estate (that is, income which has suffered income tax at source in the hands of the personal representative at the standard rate). In the case of a foreign estate, any distribution is treated in the hands of the beneficiary as income chargeable under Case III of Schedule D.

#### **799 Interpretation (*Chapter 1*)**

##### **Summary**

This section is an interpretation section and gives the definition of, and provides for the construction of, certain terms used throughout the Chapter.

##### **Details**

##### ***Definitions***

“administration period” has the meaning set out in *section 800(1)* (that is, the period (1)(a) beginning with the death of a person and ending on the completion of the administration of the deceased person's estate).

“charges on residue” are the liabilities that are properly payable out of a deceased person's estate and include funeral, testamentary and administration expenses, general and demonstrative legacies and the payment of any annuity. Included are any other liabilities of the personal representatives in their capacity as such. Also included in such liabilities is interest payable in respect of these liabilities.

A deceased person's estate is a “foreign estate” when it is not an Irish estate.

A deceased person's estate is an "Irish estate" if the income of the estate consists wholly of income which has either borne Irish tax by deduction or in respect of which the personal representatives are assessable to Irish tax. Excluded is an estate, the income of which is exempt from Irish income tax on the basis that the personal representatives are not resident or not ordinarily resident in the State.

"personal representative" means the executor or administrator for the time being of a deceased person and includes a person who takes possession of or intermeddles with the property of the deceased. It also includes a person who, under the law of another country, has similar functions in that country, in relation to the deceased, as those of a personal representative in this State.

"specific disposition" is a specific devise (of real property) or bequest (of personal property) made by the testator (for example, a specific item of property is left to a person in a will). It includes a similar type of bequest or devise under the law of a foreign country.

### ***Aggregate income of a deceased person's estate***

The aggregate income of a deceased person's estate for any year of assessment means the total income from all sources accruing to the personal representatives for that year and which consists of — **(1)(b)(i)**

- income chargeable to Irish income tax, and
- income which would have been chargeable to Irish income tax had it arisen in the State to a person resident and ordinarily resident in the State.

Any deductions which would have been allowable had the income been chargeable to Irish tax may be deducted.

### ***Sums paid***

References to sums paid include references to a transfer or appropriation of assets by a personal representative to himself or herself or a set off or release of debts. **(1)(b)(ii) to (iv)**

References to sums payable include references to assets which the personal representative is obliged to transfer or has a right to appropriate to himself or herself on the completion of the administration of the estate. The reference also includes debts which the personal representative must set off or release.

References to "amount" in relation to such assets or debts are references to the value of those assets at the date of transfer or appropriation or at the completion of the administration or to the amount of the debts.

### ***Absolute interest in residue***

A beneficiary has an absolute interest in the residue or in part of the residue of a deceased person's estate, if he/she is entitled to the payment of the capital of the residue or of that part of the residue. **(2)(a)**

### ***Limited interest in residue***

A beneficiary has a limited interest in the residue of a deceased person's estate or in part of the residue if he/she is entitled to be paid the income of the residue or of that part of the residue for a set period (for example, for life or other limited period). **(2)(b)**

### ***Real estate***

Real estate, which is included in a residuary bequest by the will of the testator, is deemed to be part of the residue of the estate and not the subject of a specific disposition. **(2)(c)**

### ***More than one residuary interest***

Where there are several dispositions in relation to the residue of an estate, the provisions of this Chapter are adapted so as to apply to each such part of the residuary estate. (3)

## **800 Limited interest in residue**

### **Summary**

This section sets out the procedure for taxing beneficiaries with a limited interest in the residue of a deceased person's estate. Such a beneficiary whose interest extends to the whole of the residue is entitled to receive the balance of the income of the estate after deducting any income used to pay annuities provided for in the will, interest payable on legacies, debts of the estate and the expenses of the personal representatives which are chargeable against income. Where the beneficiary has a limited interest in part only of the residue, he/she receives a corresponding part of the balance of the full income as so computed.

### **Details**

The section applies to a beneficiary who has a limited interest in the residue or part of the residue of an estate of a deceased person, during the period of administration of the deceased person's estate (that is, the period starting on the death of the person and ending on the completion of the administration of his/ her estate). (1)

Any sum paid to such a beneficiary during the administration period is treated as paid to that person as income for the tax year in which the payment is made. If the limited interest of the beneficiary has ceased when the payment is made, the payment is treated as made in the last tax year in which the interest subsisted. (2)

When the administration period is complete, the total interim payments received by the beneficiary during the administration period and the amounts paid on completion of that period to the beneficiary are aggregated and apportioned on a day to day basis over the administration period. The payments are then treated as income of the beneficiary in the tax year in which they are so treated as accruing.

The charge to tax already made in respect of the interim payments is recalculated to take account of any final payment paid on the completion of the administration of the estate. (3)

Payments to a beneficiary are treated as having been received after tax at the standard rate has been deducted, where the payment is from an Irish estate. In assessing the payments for income tax purposes, the payments received are regrossed at the standard rate of tax. Credit is allowable for any tax deemed to have been paid. (4)

In the case of a foreign estate, the payments are treated as income chargeable under Case III, Schedule D.

Where a beneficiary is charged to Irish income tax on income in respect of an interest in a foreign estate, and any part of the aggregate income of the estate has borne Irish income tax, the amount of that income charged to Irish tax may be reduced in the same proportion as the Irish income from the estate which has borne Irish tax bears to the whole aggregate income of the estate. (5)

Where a beneficiary's income is reduced as at *subsection (5)*, the amount by which it is reduced is treated as income from which income tax at the standard rate has been deducted, for the purposes of computing the beneficiary's total income. (6)

## 801 Absolute interest in residue

### Summary

This section sets out the procedure for taxing beneficiaries who have an absolute interest in the residue of a deceased person's estate. Effectively, such a beneficiary is taxable on his/her share of the residuary estate income for each of the tax years in the administration period by reference to the income arising from the date of death onwards. However, no assessment can be made on such a person before the end of the administration period unless and to the extent that sums have been paid on account of his/her absolute interest. At the end of the administration period, he/she is assessed on any balance of the residuary estate income not previously assessed. **Section 802** contains provisions supplementary to this section.

It should be noted that, where an estate which is small and is a straightforward one (for example, only one or two residuary beneficiaries with no annuitants, life tenants or other persons with an entitlement to any of the income of the estate) the inspector may adapt an approach simpler to that provided for in this section and tax the residuary beneficiary directly on all the income of the estate received from death onwards. In such cases no assessments are made on the personal representative and the beneficiary is taxed each year as if he/she had received the estate income from its various sources directly himself or herself.

### Details

This section applies to a person who has an absolute interest in the residue of a deceased person's estate during the administration period. (1)

The "residuary income" of the beneficiary is calculated for each year of assessment (or part thereof) and is the beneficiary's share of the residuary income of the estate during which the administration was ongoing and the beneficiary had an absolute interest – refer to **section 802**. (2)

Any sum (this could include the value of any asset transferred) paid to a beneficiary during the administration period in respect of his/her absolute interest in the residue (that is, a payment on account), is treated as paid to that person as income of the beneficiary for the tax year in which the payment was made and in the case of an Irish estate is deemed to have been paid net of tax. (3)

In the case of an Irish estate, each sum treated as paid to the beneficiary as income is deemed to represent a gross amount of income equal to the amount received grossed up at the standard rate of income tax for the tax year to which the sum received is attributable. (4)

When the administration period is complete, any interim payments made to a beneficiary are aggregated with the final payment. In the case of an Irish estate, any tax adjustments are made for the whole of the administration period so that the beneficiary is taxed for each tax year as if his/her residuary income for each such year had actually been paid as taxed income for that year. (5)

In the case of a foreign estate, each sum treated as paid as income is deemed to be income chargeable to tax under Case III, Schedule D (that is, as if it were foreign source income). (6)

Where a beneficiary has been assessed to income tax on income from a foreign estate and some of that income had already borne Irish tax, the amount of income chargeable on the beneficiary is reduced in the same proportion as the amount of the income of the estate which has borne Irish tax bears to the total income of the estate. (7)

Where a reduction of income has been made under **subsection (7)**, the amount of the (8)

reduction is grossed up at the standard rate of income tax when computing the beneficiary's total income.

For the purposes of corporation tax, the residuary income of a company is computed initially to the tax year and then apportioned to the company accounting period(s) comprised within the tax year. (9)

## 802 Supplementary provisions as to absolute interest in residue

### Summary

This section sets out how the residuary income of an estate is determined for the purposes of *section 801*.

### Details

The residuary income of an estate for any year of assessment is the aggregate income of the estate for that year reduced by — (1)

- any annual interest, annuity or other annual payment which is a charge on the residue,
- any expenses incurred by the personal representatives in the management of the assets of the estate, to the extent that they are properly chargeable to income,
- any income to which a beneficiary has become entitled to during the course of the administration under a specific disposition or will become entitled to under a contingent or a vested interest when the administration period is completed.

The “benefits received” by a residuary beneficiary in respect of an absolute interest in the residue mean the total of all sums paid (either before the completion of the administration period or on completion of that period) less income tax deducted at the standard rate. In the case of a foreign estate, the benefits received is the amount of such sums without deduction of income tax. Where the benefits or advances made to a beneficiary in respect of his/her share in the residue during the course of the administration exceed the amount of the total of the residuary income at the completion of the administration period, the beneficiary's residuary income is proportionately adjusted for the tax years of the administration period. (2)

If a beneficiary, other than the ultimate beneficiary at the close of the administration period, had an interest in the residue during the administration period, the residuary income of both beneficiaries is aggregated together to see whether an apportionment as set out in *subsection (2)* above is needed. (3)

## 803 Special provisions as to certain interests

### Summary

This section provides for the following situations —

- where a beneficiary with an absolute interest in the residue of an estate dies before the administration of that estate is completed,
- where successive beneficiaries succeed to the interest in the residue before the administration of the estate is finalised, and
- where a person with a discretionary interest in the residue receives a payment from the residue.

### Details

If a beneficiary with an interest in the residue of an estate dies before the administration of the estate is finalised, that interest in the residue forms part of his/her own estate. (1)

His/her personal representatives are, accordingly, treated as being entitled to the residuary income from that estate.

Where during the course of administration of an estate, successive beneficiaries become entitled to the absolute interest in the residue (that is, the first beneficiary may die while the estate is still being administered), any payments made from the residue are treated as payments on account to the first beneficiary, net of standard rate tax in the case of an Irish estate. The next person to succeed to the residue is treated for tax purposes in the same manner in respect of any payments from the residue. (2)

Any payment made to a person with a discretionary interest in the residue during the course of the administration period is treated as income of that person for the tax year in which it was paid. (3)

## 804 Adjustments and information

### Summary

This section provides for adjustments to be made on the completion of the administration of an estate in respect of any overpayments or underpayments. It also provides for the furnishing of information to the Revenue.

### Details

If on the completion of the administration of an estate, the amount finally paid to a beneficiary for any year of assessment is greater than the amount previously deemed to have been paid, an amended assessment may be made. (1)

If on the completion of the administration of the estate the amount finally paid to a beneficiary for any year of assessment is less than the amount previously deemed to have been paid, any overpaid tax is to be repaid notwithstanding the general time limit for making a claim for a repayment of tax set out in *section 865*. Any reliefs given will have to be readjusted to reflect the final amounts payable. (2)

The time limit for making an amended assessment, adjusting an existing assessment or claiming a refund for overpaid tax is 3 years from the end of the tax year in which the administration of the estate is completed. (3)

The Revenue Commissioners may ask, in writing, any personal representative both current or former, or any beneficiary, for information in connection with the administration of a deceased person's estate. This information must be given within 28 days. (4)

## CHAPTER 2

### *Surcharge on certain income of trustees*

## 805 Surcharge on certain income of trustees

### Summary

This section imposes a surcharge of 20 per cent on income, arising in a year of assessment to certain trustees, which is not distributed within the year of assessment or within 18 months after the end of that year in such a way as to become the income of the person to whom it is distributed. The surcharge liability is regarded as part of the income tax liability for the year of assessment in which it is incurred.



## Details

### **Definitions**

The term “personal representative” has the same meaning as in *section 799(1)*. (1)

The term “trustees” does not include personal representatives. However, where personal representatives, on or before the completion of the administration of the estate of a deceased person, pay any accumulated income to a trust created under a will, the payment is to be treated in the hands of the trust as a net sum after deduction of income tax at the standard rate so that the trustees of the trust will be liable, in the event of their failure to distribute the income within the period of grace, to the surcharge on the grossed up equivalent of the income received from the personal representatives.

### **Application**

The section applies to income which is to be accumulated or which is payable at the discretion of trustees. The latter provision is necessary because, even though trustees may not have been given express power to accumulate the income, they may defer distribution pending the exercise of their discretion. (2)(a)

### **Exceptions**

The section does not apply —

- in circumstances where the income is regarded as income of the beneficiary under the trust, for example, where property is held for the benefit of a minor indefeasibly (that is, the benefit cannot be lost) so that the minor or his/her estate will in any event receive the income, (2)(b)
- in circumstances where under the Income Tax Acts the income arises under settlements and is deemed to be the income of the settlor (and, therefore, liable to income tax in his/her hands),
- to income arising under a trust established for charitable purposes only or to income from investments of a trust devoted solely to the provision of, broadly speaking, pensions, lump sums and gratuities given on retirement or death, (2)(c)
- to expenses which are properly chargeable to income or which would be so chargeable but for any express provisions of the trust, and (2)(d)
- to income of the trust which is distributed in the year of assessment in which it arises, or within 18 months after the end of that year, in such circumstances that the income is to be treated as the beneficiary’s income for all the purposes of the Income Tax Acts. (2)(e)

### **The surcharge**

An additional duty of income tax (called a surcharge) of 20 per cent is chargeable on income to which the section applies, in addition to income tax at the standard rate. (3)(a)

The surcharge, to be made on the trustees in respect of income arising in a year of assessment, is to be charged on the trustees for the year of assessment in which the period of 18 months beginning after the end of the year of assessment, in which the income arises, ends. The surcharge is to be treated as income tax chargeable for the year of assessment in which it so charged. (3)(b)

All the provisions of the Income Tax Acts (that is, those relating to assessments, collection, appeals, etc) apply to the surcharge in the same way as they apply to normal income tax. (3)(c)

The recipient of a distribution out of income which has been subjected to the surcharge is not to get a credit for any part of the surcharge. (4)

***Information and penalties***

Provision is made for the obtaining of information about the income of, and distributions (5) by, trustees and about the identity of beneficiaries. Provision is also made for invoking the penalty provisions of *sections 1052, 1053 and 1054* for failure to supply such information.