

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

## **Finance Act 2021 edition**

### **Part 46 Persons Chargeable in a Representative Capacity**

**December 2021**



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## **PART 46**

### **PERSONS CHARGEABLE IN A REPRESENTATIVE CAPACITY**

#### CHAPTER 1

*Income tax and corporation tax*

#### **Overview**

This Chapter provides for the taxation of personal representatives for the purposes of income tax and corporation tax. It provides for the taxation of bodies of persons, trustees or guardians of incapacitated persons, executors of deceased persons and court appointed receivers. It also outlines the duties under the Tax Acts of trustees of incapacitated persons and minors, personal representatives of non-resident companies and executors. Furthermore it provides for limiting the liability of certain trustees, agents and receivers who have made returns under *section 890*.

#### **1044 Bodies of persons**

A body of persons (for example, a society) is chargeable to income tax in the same manner as any person under the Income Tax Acts unless the body is chargeable to corporation tax under *section 21*. (1)

The officer responsible for ensuring that all acts required to be done under the Income Tax Acts regarding the assessment and payment of tax of the body and the assessment of employees of the body is the treasurer, auditor or receiver of the body. In the case of a company the officer responsible is the company secretary. (2)

These officers may retain so much of the money coming into their hands on behalf of the body as is sufficient to pay the tax charged on the body and are indemnified for all such payments made under the Income Tax Acts. (3)

#### **1045 Trustees, guardians and committees**

The trustee, guardian or committee exercising control or management over the property or concern of an incapacitated person, whether resident in the State or not, is assessable and chargeable to income tax in the same manner as that person would be assessed if he/she was not incapacitated.

#### **1046 Liability of trustees, etc**

The representative of an incapacitated person or of a non-resident person is answerable under the Income Tax Acts regarding the assessment and payment of income tax. Such representatives may retain so much of the money coming in to their hands on behalf of the incapacitated or non-resident person as is sufficient to pay the tax charged and are indemnified for all such payments made under the Income Tax Acts. These provisions also apply to a person in whose name a non-resident person is chargeable to corporation tax.

#### **1047 Liability of parents, guardians, executors and administrators**

The executor or administrator of the estate of a deceased individual is liable for the tax charged on the deceased as well as interest on late payments and any penalties due. Such amounts shall be a debt on the estate of the deceased individual and the executor or administrator may deduct all such payments out of the assets of the estate. Likewise

the parent or guardian of an infant chargeable to income tax is liable for the tax in default of payment by the infant. The parent or guardian making such a payment is allowed all sums so paid in his/her accounts.

#### **1048 Assessment of executors and administrators**

Where a person dies the executor or administrator of his/her estate is assessable and chargeable to any assessment to tax which could have been made on the person immediately before his/her death or which could be made on the person if he/she were living. The amount of the income tax is a debt due and payable out of the estate of the deceased person. (1)

No assessment can be made later than 3 years after the end of the year of assessment in which the deceased person died where the grant of probate or letters of administration was made in that year. (2)

In any other case no assessment can be made later than 2 years after the end of the year of assessment in which such grant was made.

However, where the executor or administrator delivers an additional affidavit under section 48 of the Capital Acquisitions Tax Consolidation Act 2003 or is liable to deliver such an additional affidavit, has been so notified by the Revenue Commissioners to do so and did not deliver the additional affidavit in the year of assessment in which the deceased person died, such assessment may be made at any time before the end of the 2 years after the end of the year of assessment in which the additional affidavit was or is delivered.

When required to so by an inspector, the executor or administrator of a deceased person must prepare and deliver to the inspector a signed written statement containing particular of the profits or gains which arose to the deceased person before his/her death to which the executor or administrator is assessable. The provisions of the Income Tax Acts relating to statements apply to this section. (3)

#### **1049 Receivers appointed by court**

A receiver appointed by a court in the State which has the direction and control of property is assessed and charged to income tax or corporation tax, as appropriate, on the property as if the property were not under the direction and control of the court. Such a receiver is answerable for doing all matters required under the Tax Acts for the assessment and payment of income tax or corporation tax, as appropriate.

#### **1050 Protection for trustees, agents and receivers**

A trustee who receives profits from trust property on behalf of another is not required to do any other act for the purpose of the assessment of that person provided he/she has made a return required by *section 890* outlining the name, address and profits of the person entitled to the profits except in cases where the Revenue Commissioners require his/her testimony. (1)

Similarly an agent or receiver of a person, other than an incapacitated person, resident in the State who has made a return under *section 890* stating the name, address and profits of that person is not required to do any other act for the purposes of the assessment of that person except where the Revenue Commissioners require the testimony of the agent or receiver under the Income Tax Acts. (2)

CHAPTER 2  
*Capital Gains Tax*

**1051 Application of *Chapter 1* for purposes of capital gains tax**

The provisions of *Chapter 1* of this Part concerning the taxation of person chargeable in a representative capacity for income tax and corporation tax purposes, with the exception of *section 1050*, apply for capital gains tax purposes.