

Requests for clearance in death cases

Part 46-01-02

This document should be read in conjunction with sections 1047, 1048 and 1051 of the 1997 Act.

Document last updated April 2023

See also Tax and Duty Manual (TDM) [Part 2 –Statement of Affairs \(Probate\) Form SA.2](#) (paragraph 4.1) for guidance for resident personal representatives or solicitors dealing with inheritance tax of a non-resident beneficiary under s.45AA CATCA.

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1 Summary

This manual explains the process for persons acting in a representative capacity to request clearance to distribute an estate after the death of a taxpayer. The guidance sets out:

- how the clearance request should be submitted (via MyEnquiries),
- the necessary advance actions, checks and due diligence, and
- the required documentation and returns.

This manual also outlines the process for caseworkers dealing with clearance requests.

When a personal representative makes a complete and accurate submission to Revenue (in accordance with paragraph 4 below) about the intended distribution of the assets of a deceased's estate; Revenue undertakes to reply within 35 working days if a compliance intervention on the deceased's or the estate's return is to be conducted, or if further information is required.

If Revenue does not reply within 35 working days, the personal representative who submitted a full and accurate clearance request may proceed to distribute the deceased's estate. If any subsequent review is conducted and a liability arises, the liability will not be sought from the personal representative. This is predicated on the submission of a complete and accurate clearance request, and confirmation that the necessary due diligence as set out in paragraph 2 of this manual has been undertaken by the personal representative.

2 Due diligence in advance of submitting a clearance request

A request for clearance should be submitted only after the personal representative has carried out the necessary due diligence on the estate. A clearance request should only be applied for when the value of the estate of the estate has been ascertained.

Where it is required or intended to seek a grant of probate or administration from the Probate Office, that application should be made before clearance is applied for. Where probate or administration has been applied for electronically, Revenue will have the details of the estate as declared on the Form SA.2 (Statement of Affairs - Probate).

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While a clearance request can be submitted before probate is granted, if the estate has materially changed and an amended Form SA.2 (Statement of Affairs – Probate) is delivered after an application for clearance has been submitted, the personal representative is **required** to notify Revenue that the deceased's estate has changed. This notification will restart the 35-day clearance timeline. For further details see paragraph [4.2](#).

The 'deemed clearance' process is based on the exercise of due diligence on the value, risk or potential issues in the estate or the pre-death tax affairs of the deceased

[Appendix 1](#) of this manual sets out a number of questions that, based on Revenue's experience, cover the broad range of issues that can arise in dealing with the estate of a deceased customer, and which should be queried or checked as part of a 'due diligence' review. This list is not exhaustive and should be tailored depending on the particular situation. Revenue accepts that some estates will be relatively straightforward to administer. For example, a PAYE (only) taxpayer may have a single source of income which is the State pension, and may have assets such as his or her principal private residence and a bank account, where the balance of funds is in line with the stated source of income. In those cases, it is unlikely that the taxpayer has a tax agent acting on his or her behalf.

It is, however, acknowledged that the tax affairs of some customers may be very complex and require a more detailed review. In those cases, the personal representative may need to liaise with the deceased individual's agent or advisor in order to satisfy themselves of the position. The level of due diligence expected from a personal representative (in conjunction with the relevant advisor or agent) in such a case should be commensurate with the circumstances of the case.

Where a Grant of Representation is not applied for, **where it is necessary or required**, such applications are outside the provisions of this deemed clearance process.

2.1 Estates not requiring a grant of probate or administration

A grant of probate or administration is not required in all cases, for example small estates or survivorship. In such cases, the representative is required to confirm that there is no requirement to seek a grant of representation in such cases and to provide the basis for that position. In such cases where there has been no requirement to file a Form SA.2, Revenue will need certain information when the application for clearance is made; which is a Schedule of Assets and the information referred to in [Appendix 1](#).

3 How the clearance request should be submitted (by MyEnquiries)

The request for clearance, including the confirmation that the necessary due diligence has been undertaken and the necessary attachments and returns as outlined in paragraph [4.2](#), should be submitted via MyEnquiries. The category/sub-category references are:

Category (Enquiry relates to)	Sub-category (And More Specifically)
PAYE	Death case – clearance request
Income Tax	Death case – clearance request
Capital Gains Tax	Death case – clearance request

Where the deceased person was registered for multiple tax heads the most appropriate category should be chosen. The submission of an enquiry to any of the above category/sub-categories combinations will result in a system acknowledgment as per Figure 1.

Thank you for your submission of [DD/MM/YYYY].

Revenue will review this submission and will contact you within 35 working days if further information is required, or an intervention is to take place.

It should be noted that Revenue will not hold the agent, including personal representatives, executors, administrators, solicitors, etc., personally liable for the relevant taxes provided that it can be shown that the necessary due diligence, as outlined in the Revenue manual [46-01-02](#) has been undertaken.

[Continue](#)

Figure 1: Automatic reply in MyEnquiries following submission of enquiry to a 'clearance' category/sub-category

4 Liabilities of the deceased (pre-death taxes)

4.1 Due diligence on deceased

Revenue will regard the personal representative as acting honestly and in good faith once confirmation is provided that the necessary due diligence has been undertaken. Revenue expects that personal representatives will query matters fully and accepts that he or she will rely on the answers provided unless there is evidence to the contrary.

See [Appendix 1](#) for the Due Diligence Questionnaire / Template. Representatives should review these areas in conducting due diligence in advance of submitting a clearance request.

4.2 Required documentation and returns

- (i) Confirmation that the necessary due diligence has been undertaken
- (ii) Where a grant of probate or administration has been applied for, the details of the application are available to Revenue via the Form SA.2 (Statement of Affairs - Probate). (See [Appendix 2](#)).

As specified in paragraph [2.1](#), if the Form SA.2 is not available to Revenue, specific information is to be provided as part of the clearance request.

Note: Where, an amended Statement of Affairs (Form SA.2) is delivered after an application for clearance has been submitted, the personal representative is **required** to notify Revenue that the deceased's estate has changed. This notification will restart the 35 working days clearance timeline, both in cases where clearance has been granted or has not yet been granted. This notification should be made via MyEnquiries using the same category as the original clearance application. Any amendment to the clearance request remains subject to the required due diligence (as per paragraph [4.1](#)).

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- (iii) Submission of an income tax return for the year of death (from 1 January to the date of death).
- (a) For PAYE (only) customers, the required income tax return is the Form 12 where the surviving spouse is the assessable spouse or civil partner¹.
The Form 12 completed by the assessable spouse should include the deceased person's (non-assessable spouse's) income to the date of death.
- (b) For 'chargeable' persons, the required income tax return is the Form 11.
 - Where the deceased spouse is the assessable spouse, the Form 11 should be completed from 1 January to the date of death.
(Note: a further tax return may be required for the rest of the tax year).
 - Where the deceased person is the non-assessable spouse, the Form 11 should include the deceased person's income and gains to his or her date of death.

¹ For ease of reading, spouse also refers to civil partner throughout the manual.

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4.3 Revenue action on receipt of submission and reply

Information on the tax treatment following bereavement in [Joint Assessed cases](#) is available on the Revenue website. An overview is included at [Appendix 4](#).

As per paragraph 3 (Figure 1) the submission of an enquiry to a 'clearance' category will generate an automatic reply, which will reference the date the submission was received. The submission - confirmation re due diligence checks, returns and any other relevant information provided - will be reviewed by a Revenue caseworker.

Revenue has a defined period to carry out that review and decide whether further review or an intervention is warranted. The defined period is 35 working days. **[This is subject to review as part of the ongoing review of this new process].**

If no contact is received from Revenue in the defined period the representative can proceed to distribute the deceased's estate and, **provided the required due diligence has been conducted**, the representative will not be personally liable for any liabilities that arise subsequently.

If the review results in the caseworker identifying matters that need to be clarified further, a Revenue reply will be sent to advise the representative that clearance is not granted. The nature of the intervention that is commenced may vary depending on the matters identified in the review. Any communication about a Revenue intervention will be conducted in accordance with the relevant Revenue Codes of Practice.

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4.4 Revenue action on receipt of representative's reply and follow up

After the queries raised about a clearance submission have been fully addressed and the intervention is being closed, a Revenue reply will be issued based on the information provided to the queries. If no additional liabilities arise and the Revenue caseworker is in a position to finalise the case, a letter will be sent to the Personal Representative or Agent, as appropriate. A sample form of wording for such a letter is included in Figure 3:

“Based on the tax returns and information submitted I confirm that all income tax / capital gains tax / other tax liabilities [**select or delete as applicable**] have been paid in full and there is no tax outstanding.

This position is subject to the proviso that, if any information comes to light that would indicate that the return submitted was materially incorrect, any necessary amended assessment or Revenue assessment may be made in accordance with Part 41 or Part 41A of the Taxes Consolidation Act 1997”.

Figure 2: Template wording for Revenue reply where queries on a submission have been fully addressed

If additional liabilities arise and it is not possible to get agreement, assessments should be amended as necessary. The personal representative will have a right of appeal against the amended assessment.

5 Liabilities of the estate (post-death taxes)

For the period between the date of death and the distribution of the estate, personal representatives are responsible for:

- registering the estate for the relevant taxes,
- ensuring that returns are filed, and
- taxes are paid.

Any CGT obligations of the estate must be fulfilled by the personal representative or administrator. The only situation where a beneficiary is the chargeable person for CGT is where they are a legatee or there is an appropriation of an asset of the estate to a beneficiary.

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Appendix 1 – Due Diligence Questionnaire / Template (draft)

A. Estate Details

- Name, Address and Tax Reference Number of Deceased
- Date of Death DD/MM/YYYY
- Name and Address of Executor / Personal Representative
- Copy of Will attached [Yes /No]
- Probate granted? [Yes/No] Date: DD/MM/YYYY
- Net Value of Estate €.....
- Market Value of joint assets not included in the Estate €.....
- Market Value of any assets disposed of, including gifts, in the 4 years to date of death €.....
- Business activities and income sources (Irish and Foreign) in 4 years prior to death
[Provide details]:

Note: the reference to '4 years to date of death' means the 4 calendar years prior to the date of death plus the year of death.

If the answer to questions 1 to 7 and 9 to 10 is 'No' or the answer to questions 11 to 14 is 'Yes', that indicates that those matters need to be resolved before clearance can be applied for. Accordingly, the application cannot be submitted as part of this deemed clearance process until those matters are finalised. The personal representative may need to contact Revenue in that regard.

B. Pre-Death

1. Have all returns and payments been filed and paid for all taxheads? Yes/No

Note: if an instalment arrangement is in place, the details will need to be reviewed with the Collector General's office before a clearance application can be made.

2. Has a Return of Income and Gains been filed for the year of death? Yes/No
3. Are all business activities and income sources reflected in the tax returns submitted in the 4 years to date of death? Yes/No
4. Are the estate assets and any jointly held assets consistent with known levels of income, inheritances, proceeds of asset disposals? Yes/No
5. Are all assets in the last Will reflected in the estate assets or jointly held assets? Yes/No
6. Are all estate or jointly held assets reflected in the latest Accounts and Balance Sheet of the Deceased? Yes/No
7. Where estate or jointly held assets include residential or commercial properties, other than the PPR, was the income generated from each, if any, reflected in the tax returns submitted in the 4 years to date of death?

If no income generated seek background / explanation.

8. Have assets been disposed of in the 10 years to date of death? Yes/No

If assets have been disposed in the 10 years to date of death, details of disposals should be ascertained – Year / Asset Description / Nature of Disposal / Consideration

9. Have all such disposals been declared for CGT? Yes/No
10. Was CGT due paid? Yes/No
11. Was there a 'Tax Creditor' provision in the latest Accounts and Balance Sheet of the Deceased? Yes/No
12. Are there any outstanding tax compliance matters in respect of which a Qualifying Disclosure should be made? Yes/No
13. Are there any tax compliance matters of doubt that should be drawn to Revenue's attention in connection with this application for clearance? Yes/No

For example, this includes any tax matters under appeal which are not yet finalised.

14. Are there any pending legal actions? (if not covered by the SA.2) Yes/No

Appendix 2 – Statement of Affairs (Probate) SA.2.

The paper CA24 – Inland Revenue Affidavit can be submitted online since September 2020, and it is known as the Statement of Affairs (Probate) SA.2.

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Appendix 3 – Extract of relevant legislative provisions

CHAPTER 1 - Income tax and corporation tax

1047 Liability of parents, guardians, executors, and administrators.

- (1) Where an individual chargeable to income tax dies, the executor or administrator of the deceased person shall be liable for—
 - (a) the tax charged on such deceased individual,
 - (b) the interest on late payment of tax in respect of which the deceased individual is liable, and
 - (c) any penalties in respect of which the deceased individual is liable,

and all such sums shall be a debt on the estate of the deceased individual and an executor or administrator may deduct all such payments out of the assets and effects of the person deceased.

- (2) Where an individual chargeable to income tax is an infant, the parent or guardian of the infant shall be liable for the tax in default of payment by the infant and a parent or guardian who makes such payment shall be allowed all sums so paid in his or her accounts.

1048 Assessment of executors and administrators.

- (1) Where a person dies, an assessment or an amended assessment, as the case may be, may be made for any year of assessment for which an assessment or an amended assessment could have been made on the person immediately before his or her death, or could be made on the person if he or she were living, in respect of the profits or gains which arose or accrued to such person before his or her death, and the amount of the income tax on such profits or gains shall be a debt due from and payable out of the estate of such person, and the executor or administrator of such person shall be assessable and chargeable in respect of such tax.
- (2) No assessment under this section shall be made later than 3 years after the expiration of the year of assessment in which the deceased person died in a case in which the grant of probate or letters of administration was made in that year, and no such assessment shall be made later than 2 years after the expiration of the year of assessment in which such grant was made in any other case; but this subsection shall apply subject to the condition that where the executor or administrator -
 - (a) after the year of assessment in which the deceased person died, delivers an additional affidavit under section 48 of the Capital Acquisitions Taxes Consolidation Act 2003, or
 - (b) is liable to deliver an additional affidavit under that section, has been so notified by the Revenue Commissioners 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 expiration of 2 years after the end of the year of assessment in which the additional affidavit was or is delivered.

- (3) The executor or administrator of any such deceased person shall, when required to do so by a notice given to the executor or administrator by an inspector, prepare and deliver to the inspector a statement in writing signed by such executor or administrator and containing particulars, to the best of such executor's or administrator's judgment and belief, of the profits or gains which arose or accrued to such deceased person before his or her death and in respect of which such executor or administrator is assessable under this section, and the provisions of the Income Tax Acts relating to statements to be delivered by any person shall apply with any necessary modifications to statements to be delivered under this section.

CHAPTER 2 - Capital gains tax

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

Chapter 1 other than section 1050 shall, subject to any necessary modifications, apply to capital gains tax.

Appendix 4 - Overview of Joint Assessment Position

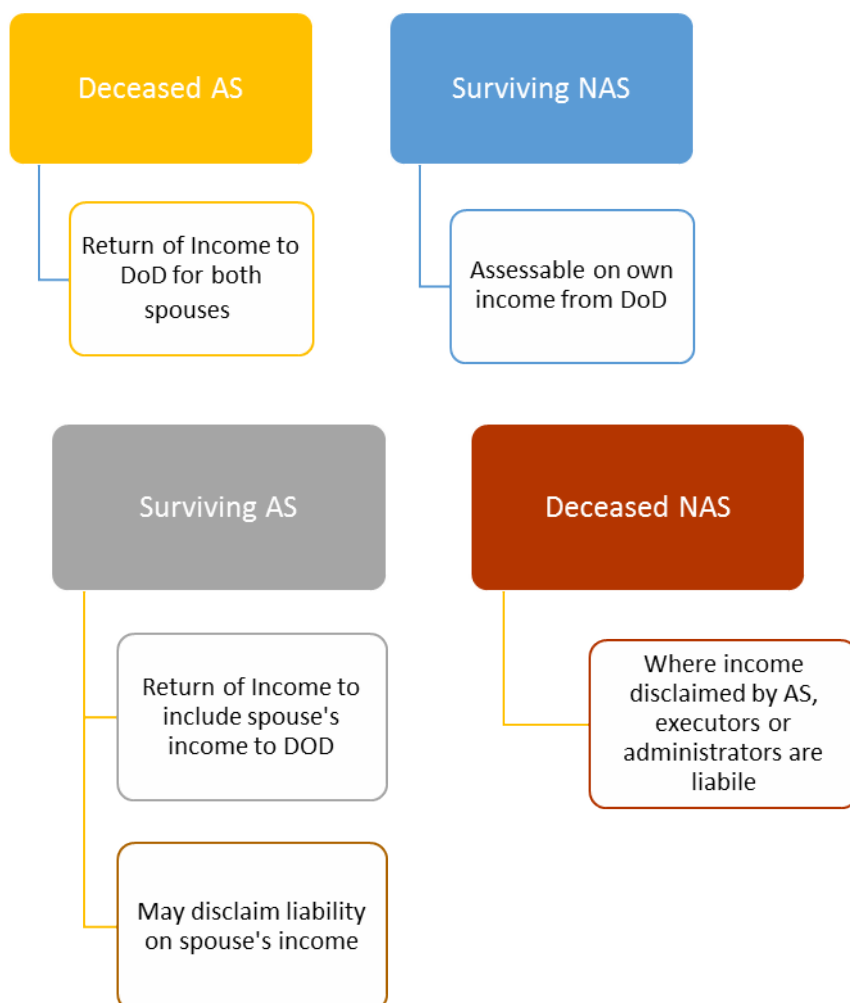


Figure 3: Overview of Joint Assessment Position

Where the Surviving Assessable Spouse disclaims liability.

Section 1022 of the 1997 Act provides the option for the assessable spouse to disclaim liability for tax on the deceased spouse's income for any year of assessment for which they were assessed jointly. This is provided under subsection (6).

The assessable spouse must give a valid notice of disclaimer to the deceased spouse's executors or administrators and to the inspector. Where that is done, the Revenue Commissioners can exercise the powers contained in section 1022(6) to recover the tax from the executors or administrators.

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