

Tax Clearance Procedure for Estates

The personal representative of an estate is liable to account for all taxes arising in the course of the administration and for all outstanding tax matters relating to the deceased. The tax cost can be met from the estate but problems can arise if the assets are distributed before the tax issue arises or the tax is quantified. The tax liability of the personal representative does not cease on the distribution of the estate and it can be difficult to recover distributed assets from the beneficiaries of an estate. Revenue operate a clearance procedure which enables a personal representative to bring the exposure to tax in respect of the estate to an end, prior to distribution of the assets. However the Revenue place the onus on the personal representative to review the assets, income and any information available in relation to the financial affairs of the deceased, to establish the tax position insofar as possible before the estate is finalised.

Due Diligence Exercise

The onus for gathering information and ensuring tax affairs are in order rests with the personal representative. Revenue stress that the clearance will be predicated on the submission of a complete and accurate clearance request, including confirmation that the necessary due diligence exercise has been carried out by the personal representative.

Key Points

The key points to note are as follows:

- The personal representative will need to carry out a due diligence exercise reviewing the pre-death position and the steps taken in the course of administration to ensure that any outstanding taxes have been dealt with.
- Revenue require the submission of an income tax return for the year of death (covering the period from 01 January to the date of death). A further tax return may be required for the estate covering the rest of the tax year.
- The due diligence questionnaire in the Revenue Manual looks at 4 years prior to the year of death for income tax, so 5 tax years are involved.
- Revenue look back 10 years for CGT disposals.
- The clearance request should not be sent in until the administration has been completed and the assets are ready to be distributed.
- If Revenue do not respond within 35 working days the executor is cleared to distribute.

Revenue Caseworker Review

The clearance request will trigger a review of the information provided and Revenue's tax database by a caseworker. If no tax issues are identified there will be no contact from Revenue, and after 35 working days the personal representative is cleared to distribute. If any tax issue arises in the course of the review Revenue will contact the personal representative and the matter needs to be dealt with to Revenue's satisfaction, and a specific closing letter needs to be issued by Revenue before the personal representative is cleared to distribute.

How to Submit a Clearance Request

The clearance application is submitted via MyEnquiries and the relevant tax head (income tax, CGT etc) and sub-category (Death case-clearance request) are selected. This generates an automatic reply, starting the 35 day clearance. If no response is received during this time, the personal representative may proceed to

distribute.

Form SA2 Statement of Affairs – Probate

If a grant is required in order to deal with the estate Revenue can access the information on the Form SA2 as part of the review. If the estate has materially changed and an amended Form SA2 Statement of Affairs is delivered, Revenue should be notified and this restarts the clock on the tax clearance (a 35 day timeline).

If a Grant is not required (for example if the only asset is a small bank account) there is no requirement to file a Form SA2, so Revenue will need certain additional information (such as a Schedule of Assets) when the application for clearance is made.

Revenue accept that the level of due diligence involved depends on the complexity of the estate. Appendix 1 of the Revenue Manual on estate clearances (available on Revenue's website) sets out a number of questions that can be used to review the tax issues that can arise in respect of an estate. The suggested queries are based on Revenue's experience in dealing with estates and cover a broad range of issues. However, Revenue note that this list is not exhaustive and the questions should be tailored depending on the particular situation.

In order to avoid possible delays in preparing the year of death income tax return, when the solicitor acting for the estate contacts the Department of Social Protection to confirm that there are no claims against the estate for inclusion on the Form SA2, a statement should also be requested setting out the social welfare benefits received in the year of death.

Points to Check

- If a tax refund is due this is an asset of the state, and technically should be included in the CAT return for the beneficiary who will receive it.
- If there are overpayments of pension returned to a fund manager the pension fund must update the payroll returns or the Revenue records will not match the year of death return.

Assistance on Due Diligence Process

O'Hanlon Tax Limited provides a tax consultancy and compliance service and can advise on all aspects of tax arising in respect of estates.

Appendix 1 – Due Diligence Questionnaire

Estate Details

- Name, address and tax reference number of deceased
- Date of death
- Name and address of personal representative
- Copy of Will attached
- Probate granted?
- 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

Pre-Death Queries

1. Have all returns and payments been filed and paid for all tax heads?

2. Has a return of income and gains been filed for the year of death?
3. Are all business activities and income sources reflected in the tax returns submitted in the 4 years to date of death?
4. Are the estate assets and any jointly held assets consistent with known levels of income, inheritances, proceeds of asset disposals?
5. Are all assets in the last Will reflected in the estate assets or jointly held assets?
6. Are all estate or jointly held assets reflected in the latest Accounts and Balance Sheet of the deceased?
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?
8. Have assets been disposed of in the 10 years to date of death?
9. Have all such disposals been declared for CGT?
10. Was CGT due paid?
11. Was there a 'Tax Creditor' provision in the latest Accounts and Balance Sheet of the deceased?
12. Are there any outstanding tax compliance matters in respect of which a Qualifying Disclosure should be made?
13. Are there any tax compliance matters of doubt that should be drawn to Revenue's attention?
14. Are there any pending legal actions not covered by the SA2?

Caveat: These notes are intended as a general guide to the Revenue's new estate clearance procedure. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances so OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect. It should also be noted that the Revenue approach may change over time and that the relevant legislation may be amended.