

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

Interpretation). ITA67 s450; CTA76 s140 and Sch2 Ptl par23; FA97 s146(1) and Sch9 Ptl par1(30) 799.—(1)

(a) In this Chapter—

“administration period” has the meaning assigned to it by section 800(1);

“charges on residue”, in relation to the estate of a deceased person, means the following liabilities properly payable out of the estate and interest payable in respect of those liabilities—

- (i) funeral, testamentary, and administration expenses and debts,
- (ii) general legacies, demonstrative legacies and annuities, and
- (iii) any other liabilities of the deceased person's personal representatives as such,

but, in the case of any such liabilities which, as between persons interested under a specific disposition or in a legacy referred to in paragraph (ii) or in an annuity and persons interested in the residue of the estate, fall exclusively or primarily on the property that is the subject of the specific disposition or on the legacy or annuity, includes only such part (if any) of those liabilities as fall ultimately on the residue;

“foreign estate”, as regards any year of assessment, means an estate other than an Irish estate;

“Irish estate”, as regards any year of assessment, means an estate the income of which comprises only income which either has borne Irish income tax by deduction or in respect of which the personal representatives are directly assessable to Irish income tax, other than an estate any part of the income of which is income in respect of which the personal representatives are entitled to claim exemption from Irish income tax by reference to the fact that they are not resident or not ordinarily resident in the State;

“personal representative”, in relation to the estate of a deceased person, means his or her personal representative within the meaning of section 3 (1) of the Succession Act, 1965 , and includes any person who takes possession of or intermeddles with the property of the deceased and also includes any person having, in relation to the deceased, under the law of another country any functions corresponding to the functions for administration purposes under the law of the State of a personal representative within the meaning of that section, and references to personal representatives as such shall be construed as references to personal representatives in their capacity as having such functions;

“specific disposition” means a specific devise or bequest made by a testator, and includes any disposition having, whether by virtue of any enactment or otherwise, under the law of the State or of another country an effect similar to that of a specific devise or bequest under the law of the State.

(b) For the purposes of this Chapter—

(i) references to the aggregate income of the estate of a deceased person for any year of assessment shall be construed, subject to section 439 (2), as references to the aggregate income from all sources for that year of the personal representatives of the deceased as such, treated as consisting of—

(I) any such income chargeable to Irish income tax by deduction or otherwise, such income being computed at the amount on which that tax falls to be borne for that year, and

(II) any such income which would have been so chargeable if it had arisen in the State to a person resident and ordinarily resident in the State, such income being computed at the full amount of that income actually arising during that year, less such deductions as would have been allowable if it had been charged to Irish income tax, but excluding any income from property devolving on the personal representatives otherwise than as assets for payment of the debts of the deceased;

(ii) references to sums paid include references to assets transferred or appropriated by a personal representative to himself or herself and to debts set off or released;

(iii) references to sums payable include references to assets as to which an obligation to transfer or a right of a personal representative to appropriate to himself or herself is subsisting on the completion of the administration and to debts as to which an obligation to release is set off, or a right of a personal representative so to do in his or her own favour, is then subsisting;

(iv) references to amount in relation to assets referred to in subparagraphs (ii) and (iii) shall be construed as references to the value of those assets at the date on which they were transferred or appropriated, or at the completion of the administration, as the case may require, and, in relation to such debts, as references to the amount of such debts.

(2) For the purposes of this Chapter—

(a) a person shall be deemed to have an absolute interest in the residue of the estate of a deceased person, or in a part of the residue of that estate, if and so long as the capital of the residue or of that part of the residue, as the case may be, would if the residue had been ascertained be properly payable to the person or to another in the person's right for the person's benefit, or is properly so payable, whether directly by the personal representatives, or indirectly through a trustee or other person;

(b) a person shall be deemed to have a limited interest in the residue of the estate of a deceased person, or in a part of the residue of that estate, during any period (other than a period during which the person has an absolute interest in the residue or in that part of the residue, as the case may be) where the income of the residue or of that part of the residue, as the case may be, for that period would, if the residue had been ascertained at the commencement of that period, be properly payable to the person, or to another person in the person's right, for the person's benefit, whether directly by the personal representatives, or indirectly through a trustee or other person;

(c) real estate included (either by a specific or a general description) in a residuary gift made by the

will of a testator shall be deemed to be a part of the residue of the testator's estate and not to be the subject of a specific disposition.

(3) Where different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Chapter shall apply in relation to each such part with the substitution—

(a) for references to the estate of references to that part of the estate, and

(b) for references to the personal representatives of the deceased as such of references to those personal representatives in their capacity as having the functions referred to in the definition of “personal representative” in relation to that part of the estate.