



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XV

ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION

426 Limited interests in residue

- (1) The following provisions of this section shall have effect in relation to a person who, during the period commencing on the death of a deceased person and ending on the completion of the administration of his estate (in this Part of this Act referred to as "the administration period") or during a part of that period, has a limited interest in the residue of the estate or in a part thereof.
- (2) When any sum has been paid during the administration period in respect of that limited interest, the amount thereof shall, subject to subsection (3) below, be deemed for all tax purposes to have been paid to that person as income for the year of assessment in which that sum was paid or, in the case of a sum paid in respect of an interest that has ceased, for the last year of assessment in which it was subsisting.
- (3) On the completion of the administration of the estate—
 - (a) the aggregate amount of all sums paid before, or payable on, the completion of the administration in respect of that limited interest shall be deemed to have accrued due to that person from day to day during the administration period or the part thereof during which he had that interest, as the case may be, and to have been paid to him as it accrued due, and
 - (b) the amount deemed to have been paid to that person by virtue of paragraph (a) above in any year of assessment shall be deemed for all tax purposes to have been paid to him as income for that year, and
 - (c) where the amount which is deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to him as income for that year by virtue of subsection (2) above, such adjustments shall be made as are provided in section 431 below.

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- (4) Any amount which is deemed to have been paid to that person as income for any year by virtue of this section shall—
- (a) in the case of a United Kingdom estate, be deemed to be income of such an amount as would after deduction of standard tax for that year be equal to the amount deemed to have been so paid, and to be income that has borne standard tax, and
 - (b) in the case of a foreign estate, be deemed to be income of the amount deemed to have been so paid, and shall be chargeable to standard tax under Case IV of Schedule D as if it were income arising from securities in a place out of the United Kingdom.
- (5) Where a person has been charged to standard tax for any year by virtue of this section in respect of an amount deemed to have been paid to him as income in respect of an interest in a foreign estate and any part of the aggregate income of that estate for that year has borne United Kingdom income tax by deduction or otherwise, the tax so charged on him shall, on proof of the facts on a claim, be reduced by an amount bearing the same proportion thereto as the amount of the said income which has borne United Kingdom income tax, less the tax so borne, bears to the amount of the said aggregate income, less the tax so borne:

Provided that, where relief has been so given, such part of the amount in respect of which he has been charged to standard tax as corresponds to the said proportion shall, for the purposes of surtax, be deemed to represent income of such an amount as would after deduction of standard tax be equal to that part of the amount charged.

427 Absolute interests in residue

- (1) The following provisions of this section shall have effect in relation to a person who, during the administration period or during a part of that period, has an absolute interest in the residue of the estate of a deceased person or in a part thereof.
- (2) There shall be ascertained in accordance with section 428 below the amount of the residuary income of the estate for each whole year of assessment, and for each broken part of a year of assessment, during which—
- (a) the administration period was current, and
 - (b) that person had that interest,

and the amount so ascertained in respect of any year or part of a year, or, in the case of a person having an absolute interest in a part of a residue, a proportionate part of that amount, is in this Part of this Act referred to as the " residuary income " of that person for that year of assessment:

Provided that, when legacy duty charged on the residue, or on the part thereof in which that person has an absolute interest, as the case may be, has been paid in respect of income for any such year or part of a year as aforesaid, his residuary income for that year shall thereafter be treated for the purposes of surtax as reduced by the amount of that duty so far as paid in respect of such income.

- (3) When any sum or sums has or have been paid during the administration period in respect of that absolute interest, the amount of that sum or the aggregate amount of those sums shall, subject to subsection (4) below, be deemed for all tax purposes to have been paid to that person as income to the extent to which, and for the year or years of assessment for which, he would have been treated for those purposes as having received income if he had had a right to receive in each year of assessment—

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- (a) in the case of a United Kingdom estate, his residuary income for that year less standard tax for that year, and
 - (b) in the case of a foreign estate his residuary income for that year,
- and that sum or the aggregate of those sums had been available for application primarily in or towards satisfaction of those rights as they accrued and had been so applied.

In the case of a United Kingdom estate, any amount which is deemed to have been paid to that person as income for any year by virtue of this subsection shall be deemed to be income of such an amount as would, after deduction of standard tax for that year, be equal to the amount deemed to have been so paid, and to be income that has borne standard tax.

- (4) On the completion of the administration of the estate—
 - (a) the amount of the residuary income of that person for any year of assessment shall be deemed for all tax purposes to have been paid to him as income for that year, and in the case of a United Kingdom estate shall be deemed to have borne income tax by reference to the standard rate, and
 - (b) where the amount which is deemed to have been paid to that person as income for any year, by virtue of this subsection is less or greater than the amount deemed to have been paid to him as income for that year by virtue of subsection (3) above, such adjustments shall be made as are provided in section 431 below.
- (5) In the case of a foreign estate, any amount which is deemed to have been paid to that person as income for any year by virtue of this section shall be deemed to be income of that amount, and shall be chargeable to standard tax under Case IV of Schedule D as if it were income arising from securities in a place out of the United Kingdom.
- (6) Where a person has been charged to standard tax for any year by virtue of this section in respect of an amount deemed to have been paid to him as income in respect of an interest in a foreign estate, and any part of the aggregate income of that estate for that year has borne United Kingdom income tax by deduction or otherwise, the tax so charged on him shall, on proof of the facts on a claim, be reduced by an amount bearing the same proportion thereto as the amount of the said income which has borne United Kingdom income tax bears to the amount of the said aggregate income.
- (7) For the purposes of any charge to corporation tax under this section, the residuary income of a company shall be computed in the first instance by reference to years of assessment, and the residuary income for any such year shall be apportioned between the accounting periods (if more than one) comprising that year.

428 Supplementary provisions as to absolute interests in residue

- (1) The amount of the residuary income of an estate for any year of assessment shall be ascertained by deducting from the aggregate income of the estate for that year—
 - (a) the amount of any annual interest, annuity or other annual payment for that year which is a charge on residue and the amount of any payment made in that year in respect of any such expenses incurred by the personal representatives as such in the management of the assets of the estate as, in the absence of any express provision in a will, would be properly chargeable to income, but excluding any such interest, annuity or payment allowed or allowable in computing the aggregate income of the estate, and

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- (b) the amount of any of the aggregate income of the estate for that year to which a person has on or after assent become entitled by virtue of a specific disposition either for a vested interest during the administration period or for a vested or contingent interest on the completion of the administration.
- (2) In the event of its appearing, on the completion of the administration of an estate in the residue of which, or in a part of the residue of which, a person had an absolute interest at the completion of the administration, that the aggregate of the benefits received in respect of that interest does not amount to as much as the aggregate for all years of the residuary income of the person having that interest, his residuary income for each year shall be reduced for the purpose of section 427 above by an amount bearing the same proportion thereto as the deficiency bears to the aggregate for all years of his residuary income.

In this subsection "benefits received" in respect of an absolute interest means the following amounts in respect of all sums paid before, or payable on, the completion of the administration in respect of that interest, that is to say—

- (a) as regards a sum paid before the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of standard tax for the year of assessment in which that sum was paid, be equal to that sum, or in the case of a foreign estate the amount of that sum, and
 - (b) as regards a sum payable on the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of standard tax for the year of assessment in which the administration is completed, be equal to that sum, or in the case of a foreign estate the amount of that sum.
- (3) In the application of subsection (2) above to a residue or a part of a residue in which a person other than the person having an absolute interest at the completion of the administration had an absolute interest at any time during the administration period, the aggregates therein mentioned shall be computed in relation to those interests taken together, and the residuary income of that other person also shall be subject to reduction thereunder.

429 Special provisions as to certain interests in residue

- (1) Where the personal representatives of a deceased person have as such a right in relation to the estate of another deceased person such that, if that right were vested in them for their own benefit, they would have an absolute or limited interest in the residue of that estate or in a part thereof, they shall be deemed to have that interest notwithstanding that that right is not vested in them for their own benefit, and any amount deemed to be paid to them as income by virtue of this Part of this Act shall be treated as part of the aggregate income of the estate of the person whose personal representatives they are.
- (2) Where different persons have successively during the administration period absolute interests in the residue of the estate of a deceased person or in a part thereof, sums paid during that period in respect of the residue or of that part thereof, as the case may be, shall be treated for the purpose of this Part of this Act as having been paid in respect of the interest of the person who first had an absolute interest therein up to the amount of—
- (a) in the case of a United Kingdom estate, the aggregate for all years of that person's residuary income less standard tax, or
 - (b) in the case of a foreign estate, the aggregate for all years of that person's residuary income,

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and, as to any balance up to a corresponding amount, in respect of the interest of the person who next had an absolute interest therein, and so on.

- (3) Where, upon the exercise of a discretion, any of the income of the residue of the estate of a deceased person for any period (being the administration period or a part thereof) would, if the residue had been ascertained at the commencement of that period, be properly payable to any person, or to another in his right, for his benefit, whether directly by the personal representatives or indirectly through a trustee or other person, the amount of any sum paid pursuant to an exercise of the discretion in favour of that person shall be deemed for all tax purposes to have been paid to that person as income for the year of assessment in which it was paid, and the provisions of subsections (4) and (5) of section 426 above shall have effect in relation to an amount which is deemed to have been paid as income by virtue of this subsection.

430 Relief from surtax for estate duty on accrued income

- (1) Where any income, having accrued before the death of any person, is taken into account both—
- (a) in estimating the principal value of an estate for the purposes of any estate duty payable on his death, and
 - (b) in ascertaining for the purposes of this Part of this Act the residuary income of his estate for any year of assessment,

then, in ascertaining the liability to surtax of any person having an absolute interest in the residue of that or any other estate or part thereof, that residuary income shall be treated as reduced by an amount calculated in accordance with the following provisions of this section.

- (2) The amount of the reduction shall be an amount which, after deduction of standard tax for the said year of assessment, would equal the amount of estate duty payable in respect of so much of the income taken into account as mentioned in subsection (1) above as exceeds any liabilities so taken into account.
- (3) The amount of estate duty payable in respect of any income taken into account in estimating the principal value of an estate shall be taken to be—
- (a) subject to paragraph (b) below, the amount which would be produced by levying estate duty on the amount of that income at the estate rate applicable to the estate in question under the law in force in Great Britain or, as the case may be, in Northern Ireland or, if estate duty is payable both in Great Britain and in Northern Ireland, whichever is the higher of the respective amounts which would be so produced;
 - (b) where section 16(3)(b) of the Finance Act 1894 or any other provision for corresponding purposes of the law in force in Northern Ireland applies for the purpose of determining the amount of the estate duty payable in Great Britain or, as the case may be, in Northern Ireland in respect of property consisting of or including that income, the amount which would be produced as aforesaid shall be taken to be an amount equal to so much of that amount of estate duty as may reasonably be regarded as attributable to that income.
- (4) The amount of any income accruing before the death of any person and taken into account in estimating the principal value of an estate shall (whether or not the income was valued separately or its amount known at the date of the death) be taken to be the actual amount so accruing less standard tax for the year of assessment in which the death occurred.

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- (5) The amounts agreed between the persons accountable for estate duty and the Board (or, as respects estate duty payable under the law of Northern Ireland, the Ministry of Finance for Northern Ireland), or determined in proceedings between them, as being respectively the principal value of an estate and the amount of any estate duty payable shall be conclusive for the purposes of this section; and evidence of those amounts and of any facts relevant to their computation may be given by the production of a document purporting to be a certificate from the Board or, as the case may be, that Ministry.
- (6) In this section references to liabilities taken into account in ascertaining the amount of the residuary income of an estate include references to liabilities allowed or allowable in computing its aggregate income.
- (7) This section shall come into force so as to apply only where the death occurred after 3rd June 1969 (and so that section 19 of the Finance Act 1956 and, where relevant, paragraph 21 of Part III of Schedule 17 to the Finance Act 1969 continue to apply to earlier deaths).

431 Adjustments and information

- (1) Where on the completion of the administration of an estate any amount is deemed by virtue of this Part of this Act to have been paid to any person as income for any year of assessment and—
 - (a) that amount is greater than the amount that has previously been deemed to have been paid to him as income for that year by virtue of this Part of this Act, or
 - (b) no amount has previously been so deemed to have been paid to him as income for that year,

an assessment may be made upon him for that year and tax charged accordingly or, on a claim being made for the purpose, any relief or additional relief to which he may be entitled shall be allowed accordingly.
- (2) Where on the completion of the administration of an estate any amount is deemed by virtue of this Part of this Act to have been paid to any person as income for any year of assessment, and that amount is less than the amount that has previously been so deemed to have been paid to him, then—
 - (a) if an assessment has already been made upon him for that year, such adjustments shall be made in that assessment as may be necessary for the purpose of giving effect to the provisions of this Part of this Act which take effect on the completion of the administration, and any tax Overpaid shall be repaid, and
 - (b) if—
 - (i) any relief has been allowed to him by reference to the amount which has been previously deemed as aforesaid to have been paid to him as income for that year, and
 - (ii) the amount of that relief exceeds the amount of relief which could have been given by reference to the amount which, on the completion of the administration, is deemed to have been paid to him as income for that year,

the relief so given in excess may, if not otherwise made good, be charged under Case VI of Schedule D and recovered from that person accordingly.

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- (3) Notwithstanding anything in the Tax Acts, the time within which an assessment may be made for the purposes of this Part of this Act, or an assessment may be adjusted for those purposes, or a claim for relief may be made by virtue of this Part of this Act, shall not expire before the end of the third year following the year of assessment in which the administration of the estate in question was completed.
- (4) The Board or, for the purpose of charging income tax at the standard rate, an inspector may by notice in writing require any person being or having been a personal representative of a deceased person, or having or having had an absolute or limited interest in the residue of the estate of a deceased person or in a part thereof, to furnish them within such time as they may direct (not 'being less than twenty-eight days) with such particulars as they think necessary for 'the purposes of this Part of this Act.

432 Interpretation

- (1) The following provisions of this section shall have effect for the purpose of the interpretation of the preceding provisions of this Part of this Act.
- (2) A person shall be deemed to have an " absolute interest" in the residue of the estate of a deceased person, or in a part thereof, if and so long as the capital of the residue or of that part thereof, as the case may be, would, if the residue had been ascertained, be properly payable to him, or to another in his right, for his benefit, or is properly so payable, whether directly by the personal representatives or indirectly through a trustee or other person.
- (3) A person shall be deemed to have a " limited interest" in the residue of the estate of a deceased person, or in a part thereof, during any period, being a period during which he has not an absolute interest in the residue or in that part thereof, as the case may be, where the income of the residue or of that part thereof, 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 him, or to another in his right, for his benefit, whether directly or indirectly as aforesaid.
- (4) " Personal representatives " means, in relation to the estate of a deceased person, his personal representatives as defined in relation to England and Wales by section 55 of the Administration of Estates Act 1925, and persons 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 England and Wales of personal representatives as so defined; and references to " personal representatives as such " shall be construed as references to the personal representatives in their capacity as having such functions as aforesaid.
- (5) " Specific disposition" means a specific devise or bequest made by a testator, and includes the disposition of personal chattels made by section 46 of the Administration of Estates Act 1925 and any disposition having, whether by virtue of any enactment or otherwise, under the law of another country an effect similar to that of a specific devise or bequest under the law of England and Wales.

Real estate included (either by a specific or general description) in a residuary gift made by the will of a testator shall be deemed to be a part of the residue of his estate and not to be the subject of a specific disposition.

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- (6) " Charges on residue " means, in relation to the estate of a deceased person, the following liabilities properly payable thereout and interest payable in respect of those liabilities, that is to say—
- (a) funeral, testamentary and administration expenses and debts, and
 - (b) general legacies, demonstrative legacies, annuities and any sum payable out of residue to which a person is entitled under the law of intestacy in any part of the United Kingdom or any other country, and
 - (c) any other liabilities of his personal representatives as such:

Provided that where, as between persons interested under a specific disposition or in such a legacy as aforesaid or in an annuity and persons interested in the residue of the estate, any such liabilities fall exclusively or primarily upon the property that is the subject of the specific disposition or upon the legacy or annuity, only such part (if any) of those liabilities as falls ultimately upon the residue shall be treated as charges on residue.

- (7) References to the " aggregate income of the estate " of a deceased person for any year of assessment shall be construed 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—
- (a) any such income which is chargeable to United Kingdom 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
 - (b) any such income which would have been so chargeable if it had arisen in the United Kingdom to a person resident and ordinarily resident therein, such income being computed at the full amount thereof actually arising during that year, less such deductions as would have been allowable if it had been charged to United Kingdom 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.

As regards surtax, this subsection has effect subject to section 287(2) (close companies: loans to participators), section 297(3) (close companies: surtax apportionments) and section 399(1)(c) (gains from insurance policies, etc.) of this Act.

- (8) " United Kingdom estate " and " foreign estate " mean respectively, as regards any year of assessment—
- (a) an estate the income of which comprises only income which either has borne United Kingdom income tax by deduction or in respect of which the personal representatives are directly assessable to United Kingdom income tax, not being an estate any part of the income of which is income in respect of which the personal representatives are entitled to claim exemption from United Kingdom income tax by reference to the fact that they are not resident, or not ordinarily resident, in the United Kingdom, and
 - (b) an estate other than a United Kingdom estate.

- (9) In a case in which different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Part of this Act shall have effect in relation to each of those parts with the substitution for references to the estate of references to that part of the estate, and for references to the personal representatives of the deceased as such of references to his personal representatives in their capacity

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as having the functions referred to in subsection (4) above in relation to that part of the estate.

- (10) References to sums paid or payable in respect of an absolute or limited interest in the residue of the estate of a deceased person, or in a part thereof, shall, in the application of this Part of this Act for the purposes of surtax, be construed as excluding any sum paid or payable in discharge of any legacy duty charged in respect of that absolute or limited interest.
- (11) "Standard tax" means United Kingdom income tax at the standard rate.
- (12) References to sums paid include references to assets that are transferred or that are appropriated by a personal representative to himself, and to debts that are set off or released; 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 is subsisting on the completion of the administration and to debts as to which an obligation to release or set off, or a right of a personal representative so to do in his own favour, is then subsisting; and references to amount shall be construed, in relation to such assets, as references to the value thereof 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 thereof.

433 Application to Scotland

For the purpose of the application of this Part of this Act to Scotland—

- (a) any reference to the completion of, the administration of an estate shall be construed as a reference to the date at which, after discharge of, or provision for, liabilities falling to be met out of the deceased's estate (including without prejudice to the foresaid generality, debts, legacies immediately payable, and legal rights of surviving spouse or children), the free balance held in trust for behoof of the residuary legatees has been ascertained, and
- (b) for paragraph (b) of section 428(1) of this Act the following paragraph shall be substituted—
- “(b) the amount of any of the aggregate income of the estate for that year to which a person has become entitled by virtue of a specific disposition”, and
- (c) " real estate " means heritable estate, and
- (d) " charges on residue " shall include, in addition to the liabilities specified in section 432(6) of this Act, any sums required to meet claims in respect of legal rights by surviving spouse or children.