

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Miscellaneous income

Chapter 6: Beneficiaries' income from estates in administration

Section 671: Successive absolute interests

2555. This section explains the position where two or more absolute interests in the residue of an estate are held successively by different people. It is based on sections 697 and 698 of ICTA.
2556. In each tax year in which a payment is made in respect of an absolute interest, it is necessary to calculate the beneficiary's assumed income entitlement. The assumed income entitlement works on a cumulative basis, so the share of the residuary income of the absolute interest holder and the basic amounts of previous tax years are taken into account. In order to give a true picture of the assumed income entitlement of someone who has an absolute interest in succession to another person, the position of the previous holder needs to be brought into the calculations. Otherwise, in certain circumstances, an element of the residuary income might escape taxation.
2557. *Subsections (1) and (2)* apply where successively there are different persons with absolute interests in the residue of an estate of a deceased person or in parts of such a residue. They apply primarily for situations where one absolute interest is succeeded by another. This might occur where, for example, an absolute interest holder dies or there is a deed varying the will so that the interest passes for income tax purposes to another beneficiary from the date of the deed etc.
2558. *Subsection (3)* contains an ordering rule to ensure that all determinations under subsection (2) or section 672(2) are made in relation to the person with the earlier interest before the person with the later interest. This subsection has been inserted to make explicit what is already implicit in the source legislation.
2559. *Subsection (4)* provides a special rule where there are two or more absolute interests in the final tax year. It is intended to ensure that it is the last absolute interest which is charged to tax on the assumed income entitlement, which will comprise all the residuary income, in the final year. This is because the last absolute interest holder will receive the capital of the residue (and also all outstanding income in respect of it).
2560. *Subsections (5) and (6)* contain special rules where section 668 (reduction in share of residuary income of estate) applies and there are successive absolute interests. These subsections provide that the calculation under section 668(1)(a) and (b) is to be made by reference to all the absolute interests taken together. Then, after applying the reduction to the last absolute interest under section 668(1) and (2), any remaining excess is applied

*These notes refer to the Income Tax (Trading and Other Income)
Act 2005 (c.5) which received Royal Assent on 24 March 2005*

to the previous absolute interest holders working backwards from the beginning of the last interest. See *Change 109* in Annex 1.