

## **TAX REP 29/03**

### **TAX LAW REWRITE: BENEFICIARIES' INCOME FROM ESTATES IN ADMINISTRATION**

*Memorandum submitted in September 2003 to the Inland Revenue by the Tax  
Faculty of the Institute of Chartered Accountants in England and Wales  
in response to Paper CC/SC(03)06: Beneficiaries' Income from  
Estates in Administration issued in June 2003*

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# **TAX LAW REWRITE: PAPER CC/SC(03)06 BENEFICIARIES' INCOME FROM ESTATES IN ADMINISTRATION**

## **A GENERAL COMMENTS**

1. We welcome the opportunity to comment on Paper CC/SC(03)06 published on 17 June by the Revenue on their website at <http://www.inlandrevenue.gov.uk/rewrite/ccsc0306.pdf>
2. We support the structure of Chapter 6, and the associated signposting which makes the clauses easier to understand than ICTA Part 16. We note that the Chapter now integrates material on personal representatives and trustees.
3. The clauses in the Introduction (clauses 554-558) and the clauses identifying the income and person chargeable (clauses 559-563) are fundamentally helpful.
4. As regards income chargeable, tax is charged under s 554 on an amount of estate income *arising* (clause 559(1) and clause 560(6)) as defined in clause 566 (absolute interests in residue), clause 572 (limited interests in residue) and clause 574 (discretionary interests in residue). These definitions do focus somewhat upon payments in respect of the interest, and this might create some confusion in the minds of readers more familiar with an 'arising' basis not limited to actual payments of income only; but in the context of the original legislation the rewrite drafting is sufficiently clear, relating to both payments and amounts payable, so that no such confusion ought to be caused in practice.
5. We agree that, as there are fundamental differences between the basis of charge for income from UK estates (clause 559) and foreign estates (clause 560), it is best to deal with these in separate clauses. We also agree the use of the new term 'basic amount' for the purposes of clauses 559 and 560.
6. The separation of the clauses in respect of estate income relating to absolute interests (clauses 564-571), to limited interests (clauses 572-573) and to discretionary interests (clauses 574-575) improves the clarity of the ICTA Part 16 legislation. Clauses 564- 571 comprise a sub-set of clauses to determine estate income relating to an absolute interest. They are not easy for the reader to understand but they do relate logically together.
7. Clause 654 is a useful introductory clause, albeit somewhat obvious in content; but it is not clear why it is necessary in clause 564(1) to refer to different rules applying for determining whether income arises in the tax year 'in which the administration period begins'.
8. There is a case for moving clause 570 (Reduction in share of residuary income of estate) to immediately after clause 564 (General rules: shares of residuary

income of estate), and for moving clause 571 (Reduction in residuary income: inheritance tax on accrued income) to immediately after clause 565 (The residuary income of the estate).

9. We agree the use of the term ‘allowable estate deductions’, as identified in clause 565(2), and we also agree the use of the new concept of the ‘assumed income entitlement’ in clauses 566-569 in identifying the basic amount of estate income for a tax year relating to a person’s absolute interest.
10. Clauses 576-580, relating to the special rules for successive interests, are appropriately drafted subject to our minor comments arising on clauses 577 and 578 in Section C.
11. We make several comments on clauses 581 and 582 (Relief where foreign estates have borne UK tax) in Section B; but we are otherwise satisfied with the structure of these, and in particular we support the proposal in Change 213 not to rewrite s 695(6) ICTA.
12. We are content with the General clauses 583-586.
13. As regards General clause 584 (Income treated as bearing tax), we agree that it is also unnecessary to rewrite s 699A(1)(b) ICTA as now serving no useful purpose.

## **B RESPONSES TO CHANGES AND NOTES**

### ***cl 562 (The aggregate income of the estate)***

14. **(5)(b) Change 136** – We agree that it is simpler to now exclude from the definition of ‘the aggregate income of the estate’ (clause 562) income from specific dispositions to which a person is or may become entitled.

15. **Note 110** We agree that it is unnecessary to rewrite s 698(1) ICTA, deeming income paid to personal representatives (who in that capacity hold a limited or absolute interest) to be part of the aggregate income of the estate, in the circumstances stated, as it will now fall within the definition of the aggregate income of the estate anyway in consequence of clause 556(5) as explained in Note 110.

### ***cl 565 (The residuary income of the estate)***

16. **(2)(a) Change 172** – We agree, in rewriting s 697(1)(a) ICTA, the omission of the requirements for interest to be annual and a charge on residue before it can be deducted from the aggregate income of the estate in calculating the residuary income of the estate.

17. **(2)(b) Note 111** - We agree that it is appropriate that clause 565(2)(b), which rewrites s 697(1)(a) ICTA so far as it relates to annual payments, should now merely reflect the requirement in s 701(6)(b) ICTA that annual payments have to be properly payable out of residue.

### ***cl 569 (Basic amount of estate income: absolute interests)***

18. **Change 173** – what is the position if the excess deductions in the final tax year should exceed the basic amount for the final tax year? Is the clause 569(2) basic amount then to be treated as nil? Moreover, if the clause 569(3) residuary income of the estate for the final year is nil, would not the clause 567(3) assumed income entitlement (and hence the basic amount) for that final year also be nil in a situation where the prior tax years’ basic amounts had all been equal to the amount of the person’s assumed income entitlement? It is not easy to understand how these provisions are intended to operate.

### ***cl 576 (Successive absolute interests)***

19. **(5),(6) Change 174** - we agree with this change, making clear in line with current practice that where clause 570 (reduction in share of residuary income of estate) applies and there are successive absolute interests the calculation under clause 570(1)(a) and (b) is to be made by reference to all the absolute interests taken together, working backwards from the last absolute interest holder through the previous absolute interest holders.

### ***cl 577 (Successive limited and absolute interests)***

20. **Note 99** - Having regard to the explanation in Note 99, we agree the drafting of clause 577(6) and (7).

***cl 580 (Apportionments)***

21. ***Change 215*** - we agree with this change, providing for just and reasonable apportionments where the parts of the residuary estate in which successive interests subsist do not wholly correspond.

***cl 582 (Relief where foreign estate has borne UK tax: limited and discretionary interests)***

22. ***Change 213*** – we agree with this change. If the meaning of s 695(6) ICTA is obscure and the section tends in practice to be ignored, there appears to be no necessity to rewrite it.

## **C SPECIFIC COMMENTS**

### ***cl 558 (meaning of “the administration period” and “the final tax year”)*** ***(1)***

23. With reference to Explanatory Notes 26 and 27, would it be clearer to replace the words ‘with the deceased’s death’ with ‘the date on which the deceased died’ to make it absolutely clear that the administration period starts with the date of death and not at the actual time of death within it? In this context, it is not very clear what the last sentence in paragraph 26 means by its reference to income passing to the deceased immediately on the commencement of the day of death; but we assume that, as the reference is to income passing to ‘the deceased’, such income constitutes estate income.

### ***cl 561 (The applicable rate for grossing up basic amounts of estate income)*** ***(4)***

24. In the first line, it might be clearer to replace the words ‘of that income’ with ‘of the basic amount’ as a more precise cross-reference to clause 561(3). The context here is of the aggregate income of the estate bearing tax at different rates and the basic amount in clause 561(4) being paid partly out of income which has borne one rate and partly out of income which has borne another rate.

### ***cl 567 (Assumed income entitlement)*** ***(1)***

25. In Step 2 would it not be clearer to replace ‘that year’ in the second line by ‘each such year’, to perhaps make clearer that Step 2 can apply to any of the tax years referred to in Step 1 if the estate is a UK estate in relation to it?

### ***cl 570 (Reduction in share of residuary income of estate)*** ***(3)***

26. How is the person’s taxation liability to be consequentially adjusted for the previous tax year and any earlier year(s)?

### ***cl 572 (When estate income relating to limited interests in residue arises)*** ***(3)(c)***

27. Should provision be made for a sum paid as well as for a sum payable (similarly in the case of Case B in clause 578 – Successive limited interests)?

### ***cl 577 (Successive limited and absolute interests)***

28. Can it be made clearer in the clause title that this clause only applies where a limited interest precedes the absolute interest? As used in the title, the word ‘successive’ does not obviously indicate which type of interest succeeds which.

### ***cl 578 (Successive limited interests)*** ***(1)(a)***

29. In line with clause 576(1), relating to absolute interests, should ‘limited’ be inserted before ‘interests’ in the first line to emphasise that clause 578 applies to limited interests only?

***cl 581 (Relief where foreign estate has borne UK tax: absolute interests)***  
***(2)***

30. With reference to the explanation in Note 152, and the drafting of clause 582(3), should the fraction be

$$\frac{T \times A - B}{C - B}$$

applying the clause 582(3) definitions of A, B and C? If so, the fraction should be the same also in clause 582(3). The tax charged on the person is not the same as the UK tax already borne by the estate (unless coincidentally).

***cl 584 (Income treated as bearing tax)***

31. Explanatory Notes paragraph 127 refers to income as having income tax (inter alia) at the basic rate; but clause 584 itself does not refer to the basic rate.

## **D        DETAILED COMMENTS ON DRAFTING**

32.        In Summary paragraph 3, should the reference be to the Response Document (to the responses on ED8) of ‘May’ 2000 rather than ‘June’ 2000?

33.        In Explanatory Notes paragraph 22 the reference in the second line should be to subsection ‘(2)’ and not to subsection ‘(1)’.

***cl 565 (The residuary income of the estate)***  
***(5)***

34.        Within the brackets, should ‘direction’ read ‘disposition’, as the definition of ‘specific disposition’ in clause 565(6) is otherwise otiose?

***Note 111***

35.        In the fifth line of the fourth paragraph, a closing bracket is necessary after the italicised ‘172’.

***cl 567 (Assumed income entitlement)***  
***(1)***

36.        Should there be a signpost from Step 4 to section 569 (Basic amount of estate income: absolute interests)?

14-13-36  
TJH/PCB  
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