



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVI

ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION

701 Interpretation

- (1) The following provisions of this section shall have effect for the purpose of the interpretation of sections 695 to 700.
- (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 of such residue, if and so long as the capital of the residue or of that part 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 of such residue, during any period, being a period during which he has not an absolute interest in the residue or in that part, where the income of the residue or of that part 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 by the personal representatives or indirectly through a trustee or other person.
- (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 personal representatives in their capacity as having such functions.
- (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

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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.

- (6) Subject to subsection (7) below, “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 of any part of the United Kingdom or any other country, and
 - (c) any other liabilities of his personal representatives as such.
- (7) Where, as between persons interested under a specific disposition or in a general or demonstrative legacy or in an annuity and persons interested in the residue of the estate, any such liabilities as are mentioned in subsection (6) above 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.
- (8) 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 there, 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.

This subsection has effect subject to sections 249(5), 421(2), 426(3) and 547(1)(c).

- (9) “United Kingdom estate” means, as regards any year of assessment, an estate the income of which comprises only income which either—
- (a) has borne United Kingdom income tax by deduction, or
 - (b) 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.
- (10) “Foreign estate” means, as regards any year of assessment, an estate which is not a United Kingdom estate.

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- (11) In a case in which different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Part shall have effect in relation to each of those parts 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 his personal representatives in their capacity as having the functions referred to in subsection (4) above in relation to that part of the estate.
- (12) In this Part—
- (a) 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;
 - (b) 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
 - (c) references to amount shall be construed, in relation to such assets as are referred to in paragraph (a) or (b) above, as references to their value 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 are so referred to, as references to the amount thereof.
- (13) In this Part references to the administration period shall be construed in accordance with section 695(1).
- (14) In relation to so much of any residuary income for any year of assessment which has borne income tax at a rate equal to the sum of the basic rate and the additional rate for that year, section 696(3) shall have effect with the substitution for paragraph (a) of the following paragraph—
- “(a) in the case of a United Kingdom estate—
 - (i) in the first instance, as regards so much of his residuary income for that year as has borne income tax at the basic rate for that year, that much of that income less income tax at that rate; and
 - (ii) subject to sub-paragraph (i), as regards so much of his residuary income for that year as has borne income tax at a rate equal to the sum of the basic rate and the additional rate for that year, that much of that income less income tax at the sum of those rates; and”;

and the references in sections 696(4) and (5)(a) and 698(2)(a) to income tax at the basic rate shall have effect as references to income tax at a rate equal to that sum.