



## OHT Guide

# Revenue's New Estate Clearance Procedure

Revenue recently published eBrief No. 044/22 which sets out a new procedure enabling a personal representative to bring the exposure to tax in respect of the estate to an end, prior to distribution of the assets.

This replaces the existing procedure whereby a personal representative could apply for a CGT letter of no audit as an asset was disposed of, or request Revenue to provide confirmation that there were no outstanding tax issues before distribution.

### Due Diligence Exercise

The onus for gathering information and ensuring tax affairs are in order rests with the personal representative, and Revenue stress that the clearance will be predicated on the submission of a complete and accurate clearance request, including confirmation that the necessary due diligence exercise has been carried out by the personal representative.

### Key Points

The key points to note are as follows:-

- The personal representative will need to carry out a due diligence exercise reviewing the pre-death position and the steps taken in the course of administration to ensure that any outstanding taxes have been dealt with.
- Revenue require the submission of an income tax return for the year of death (covering the period from 01 January to the date of death). A further tax return may be required for the estate covering the rest of the tax year.
- The due diligence questionnaire included in the Revenue Manual refers to a timeline of 4 years prior to death in dealing with business activities and income sources. Revenue note that this means the 4 calendar years prior to the date of death plus the year of death, so 5 tax years are involved.

- The due diligence questionnaire looks at whether assets have been disposed of in the 10 years to date of death, so the "look back" period for CGT cases is longer.
- Revenue will review the tax records and if further information is required or if a compliance intervention is required on the pre-death position or the estate, Revenue will notify the personal representative. In such cases, Revenue's queries need to be dealt with and finalised before they will clear the distribution.
- The clearance request should not be sent in until the value of the estate of the estate has been ascertained.
- If Revenue do not respond within 35 working days the executor is cleared to distribute.

### Revenue Caseworker Review

The clearance request will trigger a review of the information provided by a Revenue caseworker. If the review results in the caseworker identifying matters that need to be clarified further, a Revenue reply will be sent to alert the personal representative that the clearance request has not been granted and Revenue will raise queries or begin an audit.

If no issues are identified there will be no contact from Revenue, the personal representative is cleared to distribute and if any subsequent tax issues arise the liability will not be sought from the personal representative.



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## How to Submit a Clearance Request

The clearance application is submitted via MyEnquiries and the relevant tax head (income tax or CGT etc) and sub-category (Death case-clearance request) need to be selected. Where the deceased person was registered for multiple tax heads the most appropriate category should be chosen.

The submission of an enquiry to a 'clearance' category will generate an automatic reply, which will be evidence of the date the submission was received. This will start the 35 day clock and if no response is received during this time, the personal representative may proceed to distribute the estate.

### Form SA2 Statement of Affairs – Probate

If a grant of probate or administration is required in order to deal with the estate, the probate application should be made before clearance is applied for and Revenue can access the information on the Form SA2 as part of the review.

If the estate has materially changed and an amended Form SA2 Statement of Affairs is delivered, Revenue should be notified and this restarts the clock on the tax clearance (a 35 day timeline). The notification that a revised Form SA2 has been filed should be made via MyEnquiries, selecting the same category as the original clearance application.

If a Grant is not required (for example if the only asset is a small bank account) there is no requirement to file a Form SA2, so Revenue will need certain additional information (such as a Schedule of Assets) when the application for clearance is made.

Revenue accept that the level of due diligence involved depends on the complexity of the estate. Appendix 1 of the manual (available [here](#)) sets out a number of questions that can be used to review the tax issues that can arise in respect of an estate.

These questions are based on Revenue's experience and cover a broad range of issues which can arise for an estate. However, Revenue note that this list is not exhaustive and the questions should be tailored depending on the particular situation.

### Assistance on Due Diligence Process

O'Hanlon Tax Limited provides a tax consultancy and compliance service and can advise on all aspects of tax arising in respect of Estates.

## Appendix 1 – Due Diligence Questionnaire

### Estate Details

- Name, Address and Tax Reference Number of Deceased
- Date of Death
- Name and Address of Personal Representative
- Copy of Will attached
- Probate granted?
- Net Value of Estate
- Market Value of joint assets not included in the Estate
- Market Value of any assets disposed of, including gifts, in the 4 years to date of death
- Business activities and income sources (Irish and Foreign) in 4 years prior to death

### Pre-Death Queries

1. Have all returns and payments been filed and paid for all tax heads?
2. Has a Return of Income and Gains been filed for the year of death?
3. Are all business activities and income sources reflected in the tax returns submitted in the 4 years to date of death?
4. Are the estate assets and any jointly held assets consistent with known levels of income, inheritances, proceeds of asset disposals?
5. Are all assets in the last Will reflected in the estate assets or jointly held assets?
6. Are all estate or jointly held assets reflected in the latest Accounts and Balance Sheet of the Deceased?
7. Where estate or jointly held assets include residential or commercial properties, other than the PPR, was the income generated from each, if any, reflected in the tax returns submitted in the 4 years to date of death?
8. Have assets been disposed of in the 10 years to date of death?
9. Have all such disposals been declared for CGT?
10. Was CGT due paid?
11. Was there a 'Tax Creditor' provision in the latest Accounts and Balance Sheet of the Deceased?
12. Are there any outstanding tax compliance matters in respect of which a Qualifying Disclosure should be made?
13. Are there any tax compliance matters of doubt that should be drawn to Revenue's attention?
14. Are there any pending legal actions not covered by the SA.2?

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**Caveat:** These notes are intended as a general guide to the Revenue's new estate clearance procedure. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances so OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect. It should also be noted that the Revenue approach may change over time and that the relevant legislation may be amended.

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