

Managing the tax affairs of someone who has died

Taxation of the deceased estate

After the date of death, the deceased estate may receive income from various sources. A trust tax return will need to be lodged for the deceased estate if there is tax payable on the income or if tax has been withheld from that income.

A trust tax return will need to be lodged each income year until the deceased estate is fully administered (that is, all of its assets and income are distributed to the beneficiaries) and no longer deriving income.

The net income of the deceased estate is taxed either in the hands of:

- the beneficiaries who are presently entitled; or
- the executor

Assessable income

Any income derived after the date of death belongs to the deceased estate. Income derived after death may include:

- salary and wages unpaid at the date of death;
- bank interest;
- death benefit termination payments;
- superannuation death benefits;
- dividends from share investments;
- trust distributions from managed investment funds;
- investment income from a friendly society funeral policy taken out after 31 December 2002;
- rent from investment properties; and
- capital gains from the sale of assets.

Amounts for annual and long service leave paid to the deceased person's beneficiaries or the executor are exempt from tax.

Death benefit termination payments and superannuation death benefits

Sometimes you may receive a payment, a death benefit, or a superannuation death benefit in your capacity as a trustee. These payments may be paid by the deceased person's employer, superannuation fund, approved deposit fund or from a retirement savings account.

A death benefit termination payment paid to a trustee is taxed in the hands of the trustee in the same way that it would be taxed if paid directly to a beneficiary. That is, the portions of the payment are subject to tax to the extent that the beneficiary is a dependant or a non-dependant of the deceased.

The employer should have provided you with a PAYG payment summary – employment termination payment which shows the components of the payment. The tax-free component of an employment termination payment (ETP) received by a trustee is not subject to tax, regardless of whether the beneficiary is a dependant or a non-dependant.

To the extent that a non-dependant is the beneficiary of the estate, the taxable component of the payment is assessable income and should be shown in the trust tax return. To the extent that the beneficiary of the estate is a dependant, taxable component amounts up to the employment termination payment (ETP) cap are not subject to tax and are not shown in the return. Amounts above the ETP cap are assessable income and should be shown.

A superannuation death benefit paid to a trustee is taxed in the hands of the trustee in the same way that it would be taxed if paid directly to a beneficiary. That is, portions of the payment are subject to tax to the extent that the beneficiary is a dependant or a non-dependant of the deceased.

The superannuation fund should have provided you with a PAYG Payment Summary – superannuation lump sum which shows the components of the payment. The tax-free component of a superannuation death benefit received by a trustee is not subject to tax, regardless of whether the beneficiary is a dependant or a non-dependant. There is no tax payable to the extent that the payment is made to a dependant or eligible non-dependant.

To the extent that a non-dependant is the beneficiary of the estate, the taxable component of the payment is assessable income

Tax-related expenses

Expenses incurred by the deceased estate in earning assessable income may be tax deductible. For example:

- tax agent's fees;
- ongoing management fees paid to investment advisers;
- bank charges, and
- rental expenses for an investment property.

Gifts made pursuant to a will are not tax deductible unless the gift is made under the cultural bequest program (in which case it must be included in the date of death return, not in the trust return).

Losses

If the deceased person has accumulated losses at the date of death, those losses cannot be carried forward into the deceased estate. Ordinary losses as well as capital losses will lapse at the time of death

Tax file number for the deceased estate

A tax file number is required to lodge a deceased estate's tax return.

This trust tax file number may be quoted to investment bodies where investments are still held by the deceased estate. It is not appropriate to quote your personal tax file number in the circumstances.

Paying tax on the income of the deceased estate

There are many factors that will determine who pays the tax on the income derived by the deceased estate and the applicable tax rate.

They include whether the beneficiaries are presently entitled, whether they are under a legal disability and whether the deceased estate is fully administered.

While the deceased estate is under your administration, you will need to determine whether the beneficiaries are presently entitled and under any legal disability at the end of each financial year.

This will determine who is liable to pay tax on the income of the deceased estate.


As executor, you cannot distribute the income or assets of a deceased estate until the debts of the deceased person, including tax liabilities, are determined and probate has been granted.

You can distribute some of the income or assets to beneficiaries if you are certain that the remainder of the deceased estate is sufficient to cover any outstanding liabilities.

Lodging the deceased estate's trust tax return

After you have determined whether the beneficiaries are presently entitled and whether they are under any legal disability at the end of the financial year, you are then required to lodge a trust tax return for the deceased estate (if you are liable to pay tax for the deceased estate).

If the deceased estate is paying tax on franked dividends, the imputation credits need to be claimed back through this trust tax return.



Important: This is not advice. Clients should not act solely on the basis of the material contained in this document. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. This document is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.