

**How should the executor report
the income earned by
a deceased taxpayer before death**

And

**rental income derived from
the deceased's properties**

Introduction

According to section 54 of the Inland Revenue Ordinance ('IRO'), the executor of a deceased taxpayer's estate is obliged to handle the deceased's tax affairs. Section 2 of the IRO defines 'executor' as any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the author of the trust.

This leaflet will help executors and other persons gain a better understanding on:

1. the obligations of an executor under the IRO;
2. the specific areas that an executor has to attend to in handling the tax affairs of the deceased;
3. how to report to the Inland Revenue Department (IRD) :
 - (a) income before death derived by the deceased taxpayer from
 - office, employment or pension
 - operating business
 - (b) income from the letting of the deceased's properties, both before and after death; and
4. the time limit for the Assessor to make assessments on the deceased taxpayer's income.

Obligations of an executor under the IRO

As explained above, an executor of a deceased taxpayer is obliged to handle the tax affairs of the deceased taxpayer, including the submission of tax returns, supplying information and settlement of tax bills.

If the deceased taxpayer had only salaries income or profits from a sole-proprietorship business, all that the executor is required to do is to report the relevant income earned before death in the deceased's Tax Return - Individuals (BIR60).

It often takes considerable time to complete the procedures for the transfer of the deceased person's legal title to a property to the beneficiaries. The letting of such a property may give rise to complications in tax procedures. For until the legal title is transferred to the beneficiaries, the executor has the obligation in filing tax returns and paying Property Tax on the rental income. This leaflet will provide more explanations in this respect.

Penalty will be imposed on the executor if he has furnished incorrect tax return or information relating to the tax liabilities of the deceased and which may result in an undercharge of tax. The penalty imposed is personal to the executor.

Monetary penalty in the form of Additional Tax may also be imposed on the executor if the deceased taxpayer has, during his or her lifetime, furnished incorrect tax return or information that results in an undercharge of tax. However, the monetary penalty imposed in the said circumstances will only be recovered as a debt due from and payable out of the deceased person's estate.

Specific areas to be attended by an executor

If the deceased taxpayer had any income chargeable to tax, the executor must write, in accordance with the provisions in section 51(6) of the IRO, to inform the Commissioner of Inland Revenue within one month after death of the cessation of the deceased person's income sources. The executor should supply the personal particulars of the deceased taxpayer, including the date of death, particulars of the relevant income sources and a copy of the death certificate, if available. The contact address and day-time contact telephone number of the executor should also be provided.

The Assessor will address the executor in a special manner in correspondence. For instance, if Ms B is the executrix, correspondence will be addressed to: "Ms B, the Executrix of the Estate of the late A". If the Assessor does not know whether the late A (the taxpayer) died intestate and/or who will administer his estate, the letter or the tax return will be addressed to "The Personal Representative of the Estate of the late A".

When the executrix Ms B completes the deceased's tax return, she must not declare any of her own income or claim any of her own allowances/deductions. Furthermore, when she completes her own tax return, she must not take any of the deceased's trading losses and report as her own. Ms B should sign on the deceased's tax return in the capacity of "The Executrix of the Estate of the late A".

Apart from the tax return relating to the year of death, sometimes an executor may be required to complete back year tax returns for the deceased taxpayer.

Any tax overpaid by the deceased taxpayer will be refunded. Since such tax refund constitutes an asset of the deceased's estate, a tax refund cheque will not be released to the executor until production of the grant of representation, in accordance with section 60J of the Probate and Administration Ordinance (for persons dying before 11 February 2006, tax refund cheque can be released to the executor upon submission of a Letter of Indemnity to the IRD and the sanction of the Estate Duty Office is in place.)

Whether tax can be reduced through the election for Personal Assessment depends on the deceased's level of income (and also that of the deceased's spouse, if married) and the amount of claimable deductions. Both the level of income and the amount of deductions will vary from year to year. Hence, the executor must decide on behalf of the deceased for election or non-election of Personal Assessment. Another leaflet -- "Introduction of Election for Personal Assessment" [\[PAM 37\(e\)\]](#) provides more information in this respect.

Apart from seeking tax clearance on income, usually the executor has to apply to the Estate Duty Office for a Certificate of Receipt of Estate Duty or a Certificate of Exemption from Estate Duty. However, such requirement will no longer be applicable for persons dying on or after 11 February 2006 (i.e. the date when the Revenue (Abolition of Estate Duty) Ordinance 2005 takes effect).

How to report salaries income earned before death

In the tax return for the year of death, the executor should report the deceased's income from employment for the period from 1 April of the relevant year to the date of death of the deceased. Any amount accrued to but not yet received by the deceased, such as accumulated leave pay and end of year bonus, must be included.

How to report profits earned before death

(a) Sole-proprietorship business

The profits/losses of a sole-proprietorship business are to be reported in the Tax Return - Individuals.

If the deceased operated a sole-proprietorship business, the business would be regarded as ceased on death. The executor should declare the assessable profits and supply other relevant information for the period from the commencement of the latest accounting period to the date of death of the deceased in the deceased's Tax Return – Individuals.

Where there is a successor to the business, the successor would be treated as operating a new business by the same business name. The successor should apply for a new business registration certificate as soon as possible. The IRD will issue a tax return to the successor in due course in the usual manner.

(b) Partnership business

The profits/losses of a partnership business should be reported by the precedent partner in a Profits Tax Return (BIR52).

A partnership business will not cease upon the death of a partner and the deceased partner is merely treated as having retired from the partnership. The Business Registration Office has to be informed of such change of partners within one month.

Profits of the partnership should be reported in the normal manner, that is, when a Profits Tax Return is received.

If the executor does not wish to elect Personal Assessment on behalf of the deceased taxpayer, there is no need to furnish any information relating to the deceased's share of profits in any partnerships in the deceased's Tax Return - Individuals.

If Personal Assessment is elected on behalf of the deceased in the deceased's tax return, the executor should use a 『✓』 in the Part 7(1) of the BIR60 to signify the election. When the deceased's share of profits/losses is ascertained, that amount as well as the deceased's income from other sources will be aggregated to compute the Personal Assessment Tax.

How to report rental income from the deceased's properties

(a) Income from solely owned properties

Rental income from solely owned properties received or receivable by the deceased forms part of the deceased's estate. However, all post-death rental income belongs to the beneficiaries. Until such time the beneficiaries of the estate can be properly ascertained, Property Tax has to be paid on all post-death rental income.

Example:

If sole owner Mr A died on 27.2.2023, the IRD will open a new file to handle all tax matters relating to the taxing of post-death rental income. For the year of death, i.e., the Year of Assessment 2022/23, there will be two tax returns and both issued to: "Ms B, the Executrix of the Estate of the late A". Ms B should report the rental income as follows:

in the 1 st tax return	rental income from 1.4.2022 to 27.2.2023
in the 2 nd tax return	rental income from 28.2.2023 to 31.3.2023

If Personal Assessment is elected on behalf of the late A, the rental income from 1.4.2022 to 27.2.2023 will be added to his other income, and the tax liability for the year will be computed under Personal Assessment.

On ascertaining the identity of the beneficiaries, the beneficiaries may elect Personal Assessment in their own Tax Return - Individuals for the Year of Assessment 2022/23, and then

rental for the period from 28.2.2023 to 31.3.2023	can be treated as income of the beneficiaries
relevant portion of the Property Tax paid	can be treated as tax paid by the beneficiaries

(b) Income from jointly owned properties

Upon the death of an owner of a jointly owned property, the relevant ownership will be passed to the surviving owner(s) automatically on an equal basis.

The death of an owner gives rise to a change in ownership (old owners include the deceased taxpayer and new owners exclude the deceased). In order to distinguish new ownership from old ownership, the IRD will open a new file for the surviving owners.

Example:

If Ms B does not wish to elect Personal Assessment on behalf of the late Mr A, there is no need to furnish any information relating to properties jointly owned by him in his Tax Return - Individuals. If Ms B does elect Personal Assessment, Mr A's rental income for the period 1.4.2022 to 27.2.2023 and his other income will be aggregated to compute the Personal Assessment Tax payable.

(c) Income from properties held by owners as tenants-in-common

Persons owning a property as tenants-in-common may hold title in different shares. Upon the death of one of the tenants-in-common, the deceased's share of ownership will not be passed to the surviving owners automatically. Instead, that share of ownership will be transferred to the beneficiary specified in the deceased's will. If the owner died intestate, the share will be transferred according to the provisions of the Intestates' Estates Ordinance (Laws of Hong Kong, Cap. 73). The IRD will open a new file to distinguish ownership and to handle the tax affairs relating to the new tenants-in-common.

Example:

Same example as above. If in the Tax Return - Individuals for the Year of Assessment 2022/23 issued in the name of "Ms B, the Executrix of the Estate of the late A", Ms B elects Personal Assessment on behalf of A, the rental income for the period 1.4.2022 to 27.2.2023 will be aggregated with A's other income to arrive at the tax payable under Personal Assessment.

When the beneficiaries (identity having been established) elect Personal Assessment, rental income for the period 28.2.2023 to 31.3.2023 will be treated as the income of the beneficiaries and any relevant Property Tax paid will be treated as tax paid by the beneficiaries.

Time limit to issue assessments

For persons dying before 11 February 2006

Tax assessments in respect of any period up to the death of a deceased taxpayer should be made -

- (a) within one year from the date of death of the taxpayer, **or**
- (b) within one year from the date of filing of any affidavit required under the Estate Duty Ordinance (Cap. 111),

whichever is the later.

For persons dying on or after 11 February 2006

Tax assessments in respect of any period up to the death of a deceased taxpayer should be made within 3 years from the end of the year of assessment in which the death occurs.

Records required to be kept

For ascertainment of the proper tax liabilities, all records relating to the income, expenditure, allowances and all vouchers required to substantiate tax deductions of/for a deceased taxpayer should be kept by the relevant person (such as executor, beneficiary, family members and previous employees of the deceased taxpayer), so that these may be produced for review upon request.

Further Information and Assistance

You may

- (a) visit our website at www.ird.gov.hk; or
- (b) telephone 187 8022.

[The contents of this leaflet are for guidance only]

PAM 49(e)

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