



## Deceased Estates: A brief guide to tying up ends!

After a person dies, and the usual arrangements are completed, there will come a time when other matters, such as tax and superannuation issues, must be looked after. The person who takes on the responsibility for administering a deceased estate is commonly referred to as the executor, but could also be known as an administrator or a legal personal representative.

One of the necessary steps in the process, and generally the first action to take, is to obtain probate. Basically, this is a court-issued document that confirms that the person whose affairs are being looked at is in fact deceased — and therefore cannot hold bank accounts, shares, property and so on — and that the person appointed executor in their will is legally entitled to wind up said affairs.

One of the central matters to take care of is the final tax return. The ATO refers to this particular return as a “date of death tax return”, which is lodged on behalf of the deceased. The ATO insists that these must be lodged on a paper return, but otherwise all the other assessment conditions apply — that is, the same tax rates, income thresholds, withholding conditions, lodging requirements and so on.

The date of death tax return will be the last document to require the deceased’s particular individual tax file number (TFN). Upon completion, this TFN will not be used again.

There are a few other differences to remember when completing this return. The executor will need to print the words “Deceased estate” on the top of the first page of the return, sign the tax return on behalf of the deceased, and show the name of the taxpayer as “The legal representative of <their name>, deceased”. Also, at the question “Will you need to lodge an Australian

tax return in the future?”, answer with an “X” or the word “No”.

Assessable income earned or derived, and deductible expenses incurred, up to the date of death should be included in the return. But income earned and deductible expenses incurred after the date of death (for example from investments and such) will need to be dealt with in the deceased estate’s trust return — not in this final individual tax return. The treatment of capital gains or losses would be dealt with in a similar way. Generally it will be advisable to seek guidance if required to complete a deceased estate trust return, which we can help you with.

If the deceased person had accumulated losses at the date of death, these can be offset against income in the final tax return (capital losses may be offset against capital gains) but can’t be carried forward into the deceased estate. Ordinary losses, as well as capital losses, that can’t be offset in this final tax return will lapse.

The ATO will usually send the ensuing notice of assessment to the executor, which should show any refund owing, or any tax liabilities. There may in some cases be a requirement to withhold amounts from the assets or income of the deceased estate to pay any tax liabilities.

To ensure everything is taken care of, here is a checklist to help gather all the loose ends that can crop up with a deceased estate. If the deceased person also carried on a business, further advice should be sought.

For more information on how this could affect you please contact Ray Barrett on 9428 1033.

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## 7 point checklist

### 1. Did the person have a will?

Yes. Determine who is the executor or administrator of the will. See next point.

No. Contact the public trustee in your state or territory to determine if they will act on behalf of the deceased person. If so, they will take the action required.

### 2. Has probate been obtained by the executor?

Yes. See next point.

No. You may need to provide further information if you wish to establish authority to deal with the tax affairs of the deceased person. See next point.

### 3. Officially notify the ATO of the person's death

Complete the "Notification of a deceased person" form (ask us for a copy if you need one).

This form:

- officially notifies the ATO of the person's death
- can be used to establish authority to deal with their tax affairs.

You will need to provide the death certificate and supporting documents required at an Australia Post outlet for an interview, or certified copies to the ATO by mail. The ATO may also attempt to match individual records to Births, Deaths and Marriages data. Ask us for assistance if need be. See next point.

### 4. Do you need to lodge a final individual tax return?

While this article may help if you need to lodge a "date of death" tax return, please see this office if you need guidance.

It is also wise to check for outstanding income tax returns for previous years.

Yes. This return should cover the period from the previous July 1 to the date of death. See next point.

No. Complete a "Non-lodgment advice form" (ask us for a copy) and send it to the ATO. On the form, where it asks for "Reason for not lodging a tax return" write "Deceased" and the date of death. See next point.

### 5. Do you need to lodge a deceased estate tax return?

Yes. Generally it will be best to seek advice. See next point.

No. If all of the above has been completed, no further information is required by the ATO.

### 6. Obtain a tax file number (TFN) for the deceased estate

As a deceased estate is considered a trust, a "TFN application for a deceased estate" form will be required. We can help with this. See next point.

### 7. Lodge the deceased estate tax return(s)

A trust tax return will need to be completed. Each financial year will require another such return to be lodged until the deceased estate has been fully administered and no longer has a tax liability.

**Important:** Clients should not act solely on the basis of the material contained in this update. 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. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.