

## ESTATE REFERENCE GUIDE 2019-20

### Resident adult individual rates & resident estate rates (first three years from death)

Taxable income	Tax payable
0 - \$18,200	Nil
\$18,201 - \$37,000	19% of excess over \$18,200
\$37,001 - \$90,000	\$3,572 + 32.5% of excess over \$37,000
\$90,001 - \$180,000	\$20,797 + 37% of excess over \$90,000
\$180,001 and over	\$54,097 + 45% of excess over \$180,000

### Estate's fourth income year and later or for testamentary trusts where no beneficiary is presently entitled

Taxable income	Tax payable
0 - \$416	Nil
\$417 - \$670	50% of excess over \$416
\$671 - \$37,000	Entire amount from \$0 taxed at 19%
\$37,001 - \$90,000	\$7,030 + 32.5% of excess over \$37,000
\$90,001 - \$180,000	\$24,255 + 37% of excess over \$90,000
\$180,001 and over	\$57,555 + 45% of excess over \$180,000

Medicare levy is applicable for testamentary trusts at 2%

### Non-resident tax rates (for all income excluding interest, unfranked dividends, royalties and managed fund income)

Taxable income	Tax payable
0 - \$90,000	32.5% for each \$1
\$90,001 - \$180,000	\$29,250 + 37% of excess over \$90,000
\$180,001 and over	\$62,550 + 45% in excess over \$180,000

Medicare levy is not applicable



Interest, unfranked dividends, royalty and managed fund income would be subject to non-resident withholding tax rates as per the tables below. This is required to be withheld by the payer and remitted to the ATO

### Withholding tax rates for non-resident taxpayers

#### - for interest, unfranked dividends and royalties

Income type	Treaty country	Non-treaty country
Interest	10% or refer to DTA*	10%
Unfranked dividends	15% or refer to DTA*	30%
Royalties	15% or refer to DTA*	30%

\*DTA – Double tax agreement

#### - for fund payments from managed investment trusts

Income type	Where AU has effective exchange of information agreement	Where AU does not have effective exchange of information agreement
Managed investment trust payments	15%	30%

### Do you need to lodge an estate return?

An Estate Tax Return would generally be required where any of the following apply:

- An Estate TFN has been issued by the ATO
- All executors are non-residents
- It has been more than 3 years since the Deceased passed away
- The net income of the estate is more than \$18,200 in any of the first 3 years after date of death
- The estate received income from franked dividends
- Tax was withheld on estate income
- The estate made capital gains as a result of the sale of estate assets
- The estate was carrying on a business
- Where any beneficiaries are presently entitled to income of the estate
- Where one or more beneficiary is a non-resident

#### Helpful Tip

To facilitate the administration of smaller and less complex estates, the ATO has published PCG 2018/4 on how the ATO will concessionally administer the tax law for eligible smaller and less complex deceased estates.

### What if there is a minor beneficiary?

- Where a minor is presently entitled to the estate income, the trustee is required to pay tax at adult rates on behalf of the minor beneficiary
- A separate notice of assessment will be issued to the trustee on behalf of each minor beneficiary

#### Helpful Tip

On lodgement of a return, a minor beneficiary may be entitled to a full refund of franking credits attached to their estate income where their taxable income does not exceed \$18,200.

### What if there is a non-resident beneficiary?

- Where a non-resident beneficiary is presently entitled to income of an estate, the executor is required to pay tax on behalf of the beneficiary for their share of the estate income
- A separate notice of assessment will be raised against the trustee on behalf of each non-resident beneficiary

## Superannuation lump sum death benefits tax rates

Component	Dependant	Non-dependant
Taxable element – taxed	Tax-free	The lower of marginal tax rate or 15%
Taxable element – untaxed	Tax-free	The lower of marginal tax rate or 30%
Tax-free	Tax-free	Tax-free

### Who is a death benefits dependant?

A death benefits dependant for tax purposes is generally:

- The spouse or former spouse of the deceased
- A child less than 18
- Any other person with whom the deceased had an interdependency relationship (see below)
- Any other person who was a financial dependent of the deceased person before he or she died (see below)

### Interdependency relationship (Section 302-20 of ITAA1997)

Two persons whether or not related by family, have an interdependency relationship if:

- They have a close personal relationship, and
- They live together, and
- One or each of them provides the other with financial support, and
- One or each of them provides the other with domestic support and personal care

### Financial dependant

A financial dependant needs to demonstrate that they were financially dependent on the deceased person just before they died. A 'dependant' is not defined in the ITAA97 and therefore the ATO relies heavily on case law to determine financial dependency. It is often the case that establishing 'financial dependency' is not clear cut and in such cases, it would be prudent for an executor to apply for a private ruling from the ATO for a determination.

## Death benefit pensions under the \$1.6 million transfer balance cap

From 01 July 2017, the \$1.6 million transfer balance Cap 'TBC' places a limit on the total amount an individual can transfer into a tax-free pension phase. Amounts transferred into retirement phase to fund the payment of a pension interest are tested against the members \$1.6 million (indexed) TBC.



*In the context of estate planning, it is important to be aware that a death benefit pension (paid to an eligible SIS dependant) is taken into account in applying the TBC rules. Different rules apply to recording a death benefit pension depending on whether the death benefit pension is revisionary or non-revisionary.*

## Capital gains tips & traps

### A full main residence exemption applies to the estate where:

- The property was the main residence of the deceased and non-income producing at date of death, and
- Land surrounding property was under 2 hectares in size, and
- The property was sold and settled within two years of the deceased's date of death

### Consider if the main residence exemption would apply if the deceased was in aged care:

- If the property was non-income producing but the deceased elects to treat the property as their main residence while they were in aged care, the full main residence exemption may apply
- If the property was income producing for less than six years whilst the Deceased was in aged care, the full main residence exemption may still apply if an election is made
- If the property was income producing for more than six years, a partial main residence exemption could apply

### Where the main residence or pre-CGT dwelling is sold and settled more than two years after the deceased's date of death:

- If the property was occupied by a specified individual under the terms of the Will, the full main residence may still apply
- If sold more than two years after the deceased's date of death and not occupied by a specified individual, then any growth of the asset from date of death until date of sale will be subject to CGT



*PCG 2019/5 provides the LPR of a deceased estate with a safe harbor that can be relied upon if a dwelling is sold and settled more than two years. It provides a list of factors the Commissioner will consider as acceptable.*

### Foreign residents are not eligible for 50% CGT discount on gains made from 9 May 2012:

- Where the taxpayer is a non-resident with taxable Australian property, the 50% discount may need to be adjusted for assets purchased prior to 9 May 2012

### Beware of the proposal to remove the main residence exemption for non-residents:

- The May 2017 budget proposed the removal of the main residence exemption on the disposal of property by foreign and temporary tax residents when selling property from 9 May 2017. This change is not yet law and is subject to parliamentary process



*Consider the tax consequences of passing CGT assets in a Will to a non-resident beneficiary or tax-exempt entity (unless it is a deductible gift recipient) as the estate would need to pay CGT on any growth in the post CGT assets from acquisition to date of death.*

### Don't forget the capital gains on collectables and personal use assets:

- Capital gains from collectables acquired for less than \$500 are disregarded
- Capital gains from personal use assets such as boats, furniture and electrical goods purchased for less than \$10,000 are disregarded

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