CAA

CHARTERED ACCOUNTANTS ACADEMY

LEARNING OUTCOMES

- To understand the legal status of deceased estates and trusts. Section 2 interpretation of a Person.
- To understand the taxation of income generated by assets in a deceased estate. Section 11
- To understand the implications of the Income Tax Act in relation to deceased estates.
- To understand the treatment of wills of a deceased person.
- To identify what constitutes an estate of a deceased person.

SECTION 2 AND DECEASED ESTATES & TRUSTS

Section 2 specifically interprets a person to include:

a. A deceased or insolvent estate; and
b. A trust, in relation to income the subject of a trust to which no beneficiary is entitled

SECTION 11

- Provision deals with INCOME DERIVED from assets in a deceased estate.
- Key terms:

  a. Ascertained beneficiaries S11(1)

  b. Assets in a deceased estate S11(1)
- Pre and Post death income.

  On the death of a taxpayer an assessment is raised on the deceased's taxable income accruing to the date of death. A new taxpayer i.e. a deceased estate, comes into being after the death. A determination has to be made as to in whose hands post death income accrues.

SECTION 11 – POST DEATH INCOME

There are at least three possible taxpayers that may be liable to income tax after a person has died.

a. The deceased person – where income is determined to have been pre-death.
b. An ascertained beneficiary
c. The deceased estate.

Section 11 provides for the taxation of the post death income

Identifying the tax payer

Terms of a will are very important.

Section 11(2)

a. Where a specific asset is left to a specific person – ascertained beneficiary
b. The ascertained beneficiary is taxable on the income derived from the asset from the day after death of the deceased.

Section 11(3)

a. Residue in a will is taxable in the hands of the estate.
b. This is of income derived from the asset or residue from the day after death until date of distribution by the executor.

Identifying the taxable income in post death period

Section 11(4)

(a). Income by virtue of a right forming part of the assets in a deceased estate which didn't become due and payable before the death of the deceased person shall be **income IF the amount would have been income of the deceased person h**ad it been received in his lifetime. This shall therefore be taxable in the hands of either the deceased estate or ascertained beneficiary.

(b). (a) above is not applicable if:

The deceased had no right the amount in his life time;

The amount is received ex gratia.

Expenditure against post death income

- Residence status of an estate
- Medical expenses of a deceased paid after death - claim a credit in the pre-death period.

Tax rates

Think of the identity of the income:

- Employment income
- Trade and investments income

TAXATION OF TRUSTS

- Section 2 includes Trusts in the definition of a person. Unless it has income to which a beneficiary is entitled.
- If a beneficiary has a vested right he then is taxable and the Trust is only a conduit.

Trust income and expenditure

- Trust income maintains its identity upon distribution to a beneficiary, unless it is distributed by way of an annuity.
- The general deduction formula applies to trust income. However, no expenditure is allowable against exempt income.

Expenditure on exempt income

- In a case where trustees earn a commission on all income they earn for the trust, and part of that income is exempt. Then the commission is only deductible to the extent that it does not relate to the exempt income.

Expenditure on exempt income

- Use the following formula to determine the non-deductible portion of the expenditure:

$$\frac{A \times B}{C}$$

- A – exempt income
- B – direct expenditure in production of trust income
- C – total gross income created by trustees

Beneficiary rights

- Vested right – beneficiary has the right to all of the income in the trust, the trustee(s) have no discretion to distributed. All income taxed in the hands of the beneficiary, whether distributed or not.
- Contingent right – beneficiary only has right to income upon meeting certain conditions, e.g. passing CTA. Only the distributed income is taxed in the beneficiary's hands, the retained income is taxed in the hands of the trust

Beneficiary rights

- Neither vested, nor contingent right – this means that distributions are made at the discretion of the trustees. All income is taxed in the hands of the trust.

PRACTICE QUESTION

Study Unit M Practice Question

QUESTIONS ?

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