PREPARATION OF ESTATE ACCOUNTS

PRESENTED BY MAUREEN CAROLAN - PERSONAL TRUST MANAGER, BANK OF IRELAND TRUST SERVICES

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Bank of Ireland
Trust Services
Private Banking
Ferry House
48-53 Lwr Mount Street
email:maureen.carolan@pb.boi.ie

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Introduction

The preparation of Estate Accounts probably ranks as the most unsexy and boring part of administering an estate but its importance cannot be overstressed. It is vital not only from a legal perspective but also for tax purposes and from a practical point of view. An informed beneficiary is much happier than someone who feels they have been kept in the dark.

This presentation will cover four main areas in relation to the provision of Estate accounts today. Firstly the duty of the executor to provide accounts, secondly the importance of distinguishing income from capital, thirdly the nature and function of accounts, and I will finish by going through a template for a standard set of estate accounts with you.

1. Duty to Provide Accounts

There is an onerous duty on Executors to manage and protect the assets in an estate following the testators death.. This fiduciary duty of care is owed to the beneficiaries of the estate. Unless the Executors maintain a detailed and accurate account of all transactions carried out during the administration of an estate it will not be possible to account for these transactions in detail at the end of the administration period.

The provision of estate accounts to the beneficiaries serves as a record and proof of the good management of the assets. While it is not necessary for these accounts to be audited, the beneficiaries may wish to have an audit carried out and the estate accounts should provide the basis of this audit.

They are also necessary for the residuary beneficiaries to sign a final receipt. The final receipt should include a clause stating that the accounts have been read and understood and that the beneficiary agrees with them. This will give the executor a much more comprehensive final receipt.

1.1 Chaine-Nixon v Bank of Ireland (1976) IR 393

While the beneficiaries are not entitled to be involved in the decision making process during the administration they are entitled to demand a full account and information relating to the assets during the administration and when the administration has been completed. The most significant case law on this subject is the case of Chaine-Nixon v Bank of Ireland (1976) IR 393. This case involved a discretionary trust in which the beneficiaries only held a potential interest. The trustees (Bank of Ireland) maintained that as the beneficiaries were all only “potential” beneficiaries and did not have a fixed interest in the trust assets, that they were not entitled to any information relating to the management of the trust. Kenny J disagreed and ruled in favour of the potential beneficiaries. He ruled that while their interest in the Trust assets was not fixed they did have a right to the information despite their status on the basis that otherwise the result would be that the Trustees were not accountable to anyone for the management of the trust.

The residuary beneficiaries in an estate are absolutely entitled to expect a full account of the administration from the Executor or indeed the Solicitor acting on behalf of the Executor as is normally the case and the executor has a duty to provide same.

1.2 In addition to these obligations, under the terms of the **Solicitors Accounts Regulations 2001** and the **Solicitors (Amendment) Act 1994** there are obligations on you in relation to client funds. S66(e) as amended of the later requires "the keeping …of accounting records containing particulars of and information as to moneys received, held, controlled or paid by him…." And I understand the penalties for non compliance are severe.

2. Distinguishing between Income and Capital

In completing the Inland Revenue Affidavit, the assets which the deceased owned are valued as at the date of death and this provides a snap shot of their estate or capital value as at that date. This valuation of assets should include income accrued but not added to accounts/investments as at the date of death. In maintaining an account of the assets during the adminisration it is important to distinguish between the capital and income and to account for both separately. Any accrued income becomes part of the capital value of the estate as at the date of death and must be distinguished from any income earned post date of death. Any income which accrues after the date of death is recorded as income of the estate.

There are many reasons why this is important:

2.1 Income and Capital beneficiaries

Under a number of wills and trusts, the income of the trust fund goes to certain beneficiaries to start with and later the capital goes to others. This makes it important to know what receipts are to be considered income and what receipts are to be considered capital and also what outgoings are should be paid from the capital and what should be paid from income. Liabilities which relate to income such as Income Tax for example should be paid from the income and accounted for separately.

2.2 Allhusen v. Whittel

The rule in Allhusen v. Whittel apportions outgoings (both of an income and of a capital nature) between capital and income of a testator's residuary estate. The idea behind the rule is that the income beneficiary of the residuary estate is intended to take the income only of whatever residue is left after the debts, testamentary expenses and legacies have been paid out of it. And so that beneficiary should not take income earned by capital that is later paid out in debts, expenses or legacies. This intermediate income of what is eaten up before the ascertainment of residue cannot itself become income of residue or payable as such to an income beneficiary of residue.

This portion of income is calculated using average interest rates for the relevant period and then is deducted from the income in the estate. This income is added to capital and distributed to the capital beneficiaries. A separate calculation is required for each payment towards debts legacies etc usually involving very small amounts of income.

While this rule can be excluded in drafting the will and this is generally the case, there are cases where the rule does apply and it requires complex adjustments which could not possibly be calculated if the distinction between capital and income is not clear in your accounts.

2.3 Income Tax

All income earned during the administration period of an estate is assessable to income tax. Depending on the circumstances of the estate and the residence of the deceased and indeed the beneficiaries, the income will either be assessable in the hands of the executors or alternatively the Inspector of Taxes may agree to treat the residuary beneficiaries as succeeding to the income directly. In either situation, tax returns will be necessary and you will have to provide an account of the income either to the Revenue Commissioners or to the beneficiaries or their tax advisers. If you maintain a detailed separate account this can simply be sent to the inspector of taxes/beneficiaries with the relevant attachments.

3. Nature and Function of Accounts

In order to serve their purpose there are a few key criteria for a set of estate accounts:

- They should be clear and easy to read
- They should be comprehensive and include details of all assets in the estate
- They should balance

- They should contain details of
- Assets as at date of death with date of death values
- Income received during the administration period broken down into dividend income, deposit interest, etc
- Debts as at date of death including unpaid debts such as outstanding income tax/CGT liabilities
- Funeral expenses
- Testamentary expenses ie all expenses incurred in the course of administering the estate
- Legacies
- Details of any gains or losses during the period
- Final distribution account

The template will provide a sample layout and a suggestion as to how you might record the above information.

In terms of when you should complete the accounts ie whether you keep a running account as you go through the administration or whether you do it all at the end is up to you. Whichever you chose, the accounts should be finalised once the following have been attended to:

- All assets have been collected and are under the control of the executors
- The expiry date of the statutory notice to creditors has passed and all debts, funeral and testamentary expenses have been paid
- Certificates of discharge from CAT have been received and you have clearance from CGT and all other taxes
- All professional fees have been paid
- All pecuniary legacies have been paid and all specific bequests have been transferred or assented
- All distributions to residuary beneficiaries have been discharge or are ready to be discharged.

If you adhere to these criteria you will be providing meaningful and comprehensive information to the beneficiaries which ultimately is the aim of this exercise. The accounts that you provide to the beneficiary should facilitate them in understanding the breakdown of their benefit, in providing information for the purposes of aggregation if they receive any further benefits, in filing their own income tax returns and in signing a final receipt.

Executors deceased

Statement of accounts of Administration 2 July 2001 to 18 October 2002

Estate Account

Funeral Expenses	**Sundry Cash Assets**
- Undertakers	- Nursing Home Refund
Sundry Debts	- Cash on Hand
- Eircom – Final Bill	- Property Insurance Refund
- Pharmacy Bill	- VHI Refund – Unexpired Membership
- Property Managers Bill	- Bank of Ireland Savings A/C *
- Refuse Charges	- Bank of Ireland Current A/C *
- ESB Bill	- Income Tax Refund
	- Prize Bonds
	- ICS Deposit A/C *
Net Estate	**Securities**
	- Irish
	- UK

* NB – Balance should include interest accrued as at date of death

- US

Property

- Apt 1 Baggot Street
- Contents

Cash Capital Account

Receipts		**Payments**	
Sundry Cash Assets		Funeral Expenses	
Proceeds Sale of Securities		Sundry Debts	
(See Attached Appendix)		Testamentary Expenses	
		(See Attached Appendix)	
		Pecuniary Legacies	
		(see Attached Appendix)	
		Cash on Hands 18/Oct/2002	

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Testamentary Expenses

- Auctioneers Valuation Fee
- Overseas Probate Services
- Solicitors Fees
- Bank's Fees

Cash Income A/C

Receipts	**Payments**
- Rental Income	- Dublin Corporation Waste Charges
- Arrears of Pension	- ESB
- Dividend Income (See Attached Appendix)	- Eircom
- Deposit Interest *	- Accountants Income Tax Fees
	- Property Mgt. Co. Fees
	- Service Charges re. Property

* This Figure should represent interest earned from date of death. Interest accrued @ date of death should not be included.

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Administration Account

Sundry Debts From Cash Capital A/C	Nett Estate from Estate A/C
Testamentary Expenses from Cash Capital A/C	Gain on Sale of Securities
Pecuniary Legacies from Cash Capital A/C	Gain on Sale of Property (if any)
	Balance of Income From Cash Income A/C
Residuary Distributions	
A Cash	
B Cash	
C Cash	
Property	
Contents	