Taxation of Guardian's Payment - Contributory and Non-Contributory

Part 05-05-17

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Note: This manual is currently subject to review and may not reflect up-to-date position. Most recent version.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

1. Introduction

The 1988 High Court judgement in the "O'Carroll" case[1] established the terms and conditions which must be satisfied before a child's pension payable under a pension scheme may be regarded, for income tax purposes, as the income of the child. Tax and Duty Manual (TDM) Part 05-01-22 sets out the tax treatment of children's pensions following that High Court judgement.

2. Tax treatment of other payments which satisfy the "O'Carroll" conditions

The Guardian's Payment, Contributory and Non-Contributory[2], are paid either to the guardian of the orphan in respect of whom the allowance/pension is payable, or to some other person for the benefit of the orphan. The Guardian's Payment (Non-Contributory) is subject to a means test. The amount payable depends on the means of the child.

As these payments are the beneficial property of the child, both payments are the income of the child. They are not chargeable as income of the guardian or such other person who is in receipt of the allowance/pension. The payments are exempt from Income Tax.

This tax treatment applies only to the Guardian's Payments. It does not apply to any Department of Social Protection (DSP) payments which include additional amounts in respect of dependent children, for example, the Bereaved Partner's Pension, both Contributory and Non-Contributory[3].

3. Certain payments exempt from Income Tax

Section 126 of the Taxes Consolidation Act 1997 was amended by section 13 of Finance Act 2018 in order to put beyond doubt that certain Social Welfare payments are exempt from the charge to tax. These payments are exempt from the charge to tax for any year of assessment to which a payment relates. This applies where the payment is made to an individual on or after 1 January 2019 and also applies to payments made prior to 1 January 2019. TDM Part 05-05-37 sets out the full list of payments exempt from the charge to tax and includes Guardian's Payment (Contributory and Non-Contributory). There is no requirement for the child to be registered for Income Tax with Revenue in respect of these DSP payments, as these payments are exempt from the charge to tax. However, if the child has any other source of taxable income, they must be registered with Revenue in respect of that other taxable income.

[1] E Ó Coindealbhain (Inspector of Taxes) v Breda O'Carroll [1989] IR 229.
[2] Previously known as the Orphan's (Contributory) Allowance and the Orphan's (Non-Contributory) Pension respectively.
[3] Previously known as Widow's, Widower's or Surviving Civil Partner's Pension (Contributory and Non-Contributory).

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