

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

Part 05-05-17

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1. Introduction

The 1988 High Court judgement in the "O'Carroll" case 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, 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 payments which include additional amounts in respect of dependent children, for example, the Widow(er)'s or Surviving Civil Partner's Pension, both Contributory and Non-Contributory.

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 and made to an individual on or after 1 January 2019 and applies retrospectively. TDM [Part 05-05-37](#) sets out the full list of payments and includes Guardian's payment (contributory and non-contributory).

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