

CHAPTER 28

HOTCHPOT**When hotchpot applies**

28-02 NOTE 4. FOR THE REFERENCE TO *Snell's Equity*, SEE NOW (32nd edn), §§ 6-068 *et seq.*

Property subject to inheritance tax

28-07 AT THE END DELETE: AND REPLACE BY: .

AFTER § 28-10 INSERT THE FOLLOWING NEW PARAGRAPH AND HEADING:

Before distribution date

28-10A It may happen that hotchpotting has to be considered by reason of inheritance tax before the date fixed for distribution. Where, for example, an undivided fund is held to pay the income to more than one beneficiary in fixed shares, inheritance tax may be payable on the death of one of the income beneficiaries. It then has to be decided how the reduction in the fund affects the interests of the surviving income beneficiary or beneficiaries (whether the share of the deceased beneficiary continues subject to an income interest or is distributable). Two alternative methods for doing so are available, corresponding to the two methods for bringing interest into account on the final distribution of the fund, which is discussed shortly.^{27a} One is to treat the tax paid as an advance in anticipation of the final distribution. Hence while income remains payable on any part of the fund, interest on the advance is calculated (at a rate of 4 per cent.) and is added to the income actually available for distribution;^{27b} the fixed shares are applied to that aggregated (and partly notional) sum, and income distributed accordingly. On the final distribution, the advances are added back, the division is performed, and then the advances are debited from each share before it is paid. The other method treats the inheritance tax as having reduced the share of the deceased beneficiary from the date when it was paid, and hence as having increased the other shares, though in a smaller fund. The adjusted shares are then applied both while income remains to be paid and on the final

^{27a} §§ 28-11 *et seq.*

^{27b} An adjustment for income tax may be required: see § 28-15.

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distribution. The existence of the two methods has been acknowledged but there is no authority on the criterion for choosing between them.^{27c}

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^{27c} *Sutton v England* [2009] EWHC 3270 (Ch); [2010] W.T.L.R. 335 at [11]–[22] (reversed on appeal on other grounds *sub nom. Southgate v Sutton* [2011] EWCA Civ 637; [2011] W.T.L.R. 1235). *Cf.*, however, § 28–14.