

Part 13 – Credit For Capital Gains Tax

Capital Acquisitions Tax

13 Part 13 - Credit For Capital Gains Tax - Section 104 CATCA 2003

This Relief is contained in Section 104 CATCA 2003. Certain events, which give rise to this relief, result in a Capital Acquisitions Tax liability and also constitute a disposal for Capital Gains Tax purposes and accordingly, two separate taxes are charged **on the same property on the same event**. The situations where this can occur are as follows:

- ❖ On gifts of real or leasehold property, stocks and shares etc.
- ❖ On the death of a life tenant where a further life interest arises.
- ❖ On the appointment by discretionary trustees of property out of a discretionary trust whether the trust arose under a will or under a settlement during the lifetime of the settlor.
- ❖ On the early break up of a trust

EXAMPLE:

John takes an appointment of property from a discretionary trust. The property comprises cash and shares. Let us assume that the gift tax liability amounts to €9,000 and the Capital Gains Tax liability amounts to €6,000. We cannot simply deduct the €6,000 Capital Gains Tax from the €9,000 Capital Acquisitions Tax liability. The legislation provides that the credit to be given for Capital Gains Tax paid should not exceed the amount of Capital Acquisitions Tax referable to the assets, which have been doubly charged to both taxes.

In this example, the cash is not liable to Capital Gains Tax whereas the shares are liable to both Capital Acquisitions Tax and Capital Gains Tax. Accordingly, the credit for Capital Gains Tax cannot exceed the Capital Acquisitions Tax referable to the shares. Assuming that the Capital Acquisitions Tax on the cash is €4,000 and on the shares is €5,000 then the credit in respect of the €6,000 Capital Gains Tax paid is limited to €5,000 leaving a net Capital Acquisitions Tax liability of €4,000.

- ❖ The relief is confined to assets which are doubly taxed
- ❖ The credit for Capital Gains Tax will not exceed the amount of Capital Acquisitions Tax referable to the assets, which are doubly taxed. Not all assets in a gift or inheritance need be liable to Capital Gains Tax also.

- ❖ Capital Gains Tax arising on the disposal of assets in the course of administration of an estate does not arise on the actual inheritance, which is the event that gives rise to Capital Acquisitions Tax. Therefore, a credit for Capital Gains Tax is not given. The amount of Capital Gains Tax thus paid may be deducted as a liability in order to arrive at the taxable value of the inheritance once it arises prior to the valuation date of the inheritance.

- ❖ **In respects of gifts and inheritances taken on or after 21 February 2006, the credit for capital gains tax is withdrawn where the asset is disposed of within 2 years of the gift or inheritance.**

Section 68 Finance Act 2011 ensures that the credit for capital gains tax is withdrawn where the asset is disposed of on the date of the gift or inheritance.