

## Part 19 - General Issues

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## **Capital Acquisitions Tax**

### **19 Part 19 - General Issues**

#### **19.1 Claims for Wages etc.**

There is a presumption against contractual relations within the family. See *Jones v Padavatton* (1961 1 W.L.R. 328) and *Balfour v Balfour* (1919 2 K.B. 571). Claims by relatives against the estate of a deceased person for wages (e.g. for nursing and maintaining the deceased or for taking over the responsibility of working the deceased's farm) or for the granting of accommodation to the deceased should be disallowed because, in the nature of things, they tend not to be accompanied by evidence of legally enforceable contracts. This practice, being based on the law in the matter, has been accepted by the Appeal Commissioners on a number of occasions. On the last of those occasions the Commissioner was glad to hear that prior to the appeal, the Revenue had drawn the taxpayer's attention to his reluctance to uphold claims for wages etc., which are not supported by evidence of a legally enforceable contract. In appropriate cases, therefore, the taxpayer should be warned that, while the right of appeal is in no way prejudiced, the Appeal Commissioners have previously rejected these claims.

#### **19.2 Advances out of residue**

Where different parts of the residue of the estate of a deceased person are retained successively in the form of advances to the residuary legatee by the deceased's personal representative-

- (a) each advance and the final distribution has (as indicated in section 30 (5) of the CATCA 2003) a separate valuation date for inheritance tax purposes,
- (b) the inheritance tax on the residuary estate (a single inheritance) is apportioned between the different parts in exactly the same way as inheritance tax is apportioned when on a death a number of simultaneous inheritances with different valuation dates are taken by one and the same beneficiary
- (c) interest on the respective apportionments of tax is calculated from the respective valuation dates.

#### **19.3 The state as ultimate intestate successor**

Where in default of any person taking the estate of a disponent who dies intestate, the State takes the estate as ultimate intestate successor, a person in whose favour the State's rights are waived is regarded as having taken an inheritance directly from the intestate disponent and not as having taken a gift from the State.

#### **19.4 Deduction of CGT for CAT purposes**

Where a house is transferred charged with a mortgage or subject to payment of partial consideration, the entire of the CGT attributable to the disposal (being a disposal of the whole house) is deductible from the entire of the CAT attributable to the disposition (being a disposition of the whole house).

#### **19.5 Arrears of income tax etc. due to the British Revenue (reciprocal arrangement)**

Arrears of Income tax, CGT, etc. due to the British Revenue by a person domiciled in this country are allowed as a debt for CAT purposes, provided that the tax was actually paid and whether or not the deceased person died possessed of assets in Great Britain.

#### **19.6 Exemption for Charities**

A gift or an inheritance which is taken for public or charitable purposes is exempt from CAT under section 76 CATCA 2003 to the extent that the Revenue Commissioners are satisfied that it has been, or will be, applied to purposes which in accordance with the laws of the State are public or charitable whether it is so applied within or without the State.

Section 76 CATCA 2003 has no application however, to the 6%, and 1% discretionary trust taxes. The charities exemption will not apply to those taxes unless the discretionary trust is created exclusively for charitable purposes in the State or Northern Ireland.

#### **19.7 Child of a stepchild**

Under section 2 of the CATCA 2003, a child includes a stepchild. Therefore the Group A threshold applies to a stepchild and to a minor child of a deceased stepchild. If a child of a deceased stepchild is not a minor the Group B threshold applies.

#### **19.8 Spouse of Disponer**

The spouse exemption applies to a donee or successor who is, at the date of the gift or at the date of the inheritance, the spouse of the disponer. In cases where there is an interval between the date of death of the disponer and the taking of an inheritance by the disponer's surviving spouse (e.g. where the inheritance consists of an appointment made by trustees out of a discretionary trust created by the will of the disponer or where the inheritance consists of a remainder interest taken after a prior life interest created by the disponer's will) the surviving spouse should be regarded as being still the disponer's spouse at the date of the inheritance even if the surviving spouse has remarried in the period between the date of death and the date of the inheritance.

#### **19.9 Common law spouses**

The Group C threshold applies to a common law spouse. However, the hardship provisions of section 59 CATCA 2003 may apply where the financial position of a surviving common law spouse and their children is particularly difficult, e.g. where the principal asset was the family home and it is affected by a substantial inheritance tax liability as a result of the death of one of the spouses. Therefore, prior to the finalisation of cases involving gifts and inheritances taken by common law spouses, the possibility that section 59 may apply should be considered.

#### **19.10 Donee or Successor a surviving spouse of a closer relation of the Disponer**

Paragraph 6 of Part 1 of the Second Schedule to the CATCA 2003 provides that where, at the date of the gift or at the date of the inheritance, the donee or successor is the surviving spouse of a deceased person who, at the time of his or her death, was of nearer relationship than such donee or successor to the disponer, that nearer relationship shall apply for the purpose of computing the tax on the gift or inheritance. In cases where the surviving spouse has remarried prior to the date of the gift or inheritance paragraph 6 is regarded as applying notwithstanding the remarriage.

#### **19.11 Taxation of income accruing during the administration of an estate**

Where it is shown that a beneficiary of the estate of a person was charged to income tax on income that accrued in respect of the deceased's estate during the period between the date of death and the valuation date of the said beneficiary's inheritance, that income will not be taken into account in calculating the beneficiary's liability to inheritance tax, and the proportion of the debts, funeral and testamentary expenses that are payable out of the part of the estate represented by the said income will, if the figures justify apportionment, be disallowed accordingly. Evidence that the beneficiary has been treated for Income Tax purposes as succeeding to the property from the date of death should be furnished.

#### **19.12 The words "exempt from tax" in section 28 (5) (e) CATCA 2003**

Section 11 of the CATCA 2003 provides that an inheritance which consists of non-Irish property in a case where neither the disponer nor the beneficiary are resident or ordinarily resident in the State shall not be a taxable inheritance. The Revenue view that for the purposes of section 28 (5) (e) this is an exemption of an inheritance has been upheld by the Appeal Commissioners on two occasions and also by the Circuit Court.

#### **19.13 Agricultural relief**

In a case where the owner of a dwelling-house, a Paye employee, inherited land situated three miles from the dwelling-house, and had, prior to taking the inheritance, a record of some part-time involvement with the letting of the land, the Revenue argued before the Appeal Commissioners that the dwelling-house was not agricultural property for the purpose of the farmer test. The decision of the Appeal Commissioners was that the house did not come within

the definition of agricultural property, as it was not of a character appropriate to the agricultural land- there must be some link between the dwelling-house and the land, and the Appeal Commissioners could find no such link.

#### **19.14 Free loans - Section 40 CATCA 2003**

Where a person receives a loan of money at a Nil rate of interest, the Revenue view is that the best price referred to in section 40 (3) CATCA 2003 is the highest price a prudent lender/depositor could get in the open market from prospective prudent borrowers.

In practice, Revenue would accept the highest rate of return the person making the loan could obtain on investing the funds on deposit.

#### **19.15 Exemption relating to certain dwellings- Section 86 CATCA 2003**

In a case where a beneficiary inherited both a dwelling-house in Dublin and a share of a house in Kerry under the will of his late father, the Circuit Court has held, in 2007, that the beneficiary was not entitled to the dwelling-house exemption for the house in Dublin. The judge held that the beneficiary had become entitled to both properties, that is to say he had an interest in the Kerry property, and accordingly, the beneficiary did not meet the requirement of section 86 (3) (b) CATCA 2003.

#### **19.16 Connected Gifts**

Under section 8 CATCA 2003, gifts are deemed to come from the original disponer when they are gifted on within 3 years before or after the original gift. However, in cases where, for example, a gift (the first gift) is taken by a married child of the disponer and consists of a house or a site for a house and that child in raising a mortgage on that property finds that the lending institution as a requirement for the mortgage demands that the property is placed in the joint names of the spouses (the second gift), then provided adequate evidence is given that the transfer into the joint names is at the insistence of the lender and that the first gift was not made to enable or facilitate the making of the second gift Section 8(1) will not apply. Section 8(2) covers this situation and will also apply in all other cases where it can be shown to the satisfaction of the Revenue that such gifts are not so connected.

#### **19.17 Credit for allowable CGT**

In most cases where both CAT and CGT are charged on the same property on the same event and where accordingly, a credit for CGT against CAT is allowable under section 104 CATCA 2003, the CGT will not have been discharged at the time the CAT return is being submitted. In such cases, Revenue will allow a temporary credit until such time as the allowable CGT is actually paid. Where this arrangement is made, Revenue will not issue a certificate of discharge from CAT until the computations and payment of CGT have been vouched.

### 19.18 Co-Directors and Business Partners Assurance

These are policies that are effected purely for commercial purposes and agreed between the individual partners/shareholders on an arms length basis without any intention to make a gift.

The approach to such policies, written in the form of own life in trust for others, is to treat the proceeds as exempt from Inheritance Tax in the following circumstances:

(1)- Proceeds on death will be used to purchase deceased's shareholding. Any surplus arising will be liable to Inheritance Tax.

(2)- the capital sum under each policy will reflect the policyholder's shareholding.

(3)- payment of premiums will be made by the individual members, or on their behalf by the company or partnership out of the individual's own company or partnership account.

(4)- new partner(s) /shareholder(s) can join the arrangement at any time, subject to the conditions applicable to the existing members of the plan.

(5)-on withdrawal from the company or on retirement, the policy of the partner who leaves reverts to himself and he will no longer benefit in the continuing arrangement, provided he sells his shareholding on withdrawal, otherwise he can remain a party to the arrangement. Such policy will be an asset in his estate on his death and will not be exempt from CAT.

(6)- where a partner refuses to join the arrangement or is unable to effect life insurance on medical grounds, he will be precluded from benefiting from the policies of his co-shareholders.

(7)- on the death of a sole surviving partner or shareholder the policy on his life will be an asset in his estate and will not be exempt from CAT. Similarly, if a partnership breaks up or a company is wound up, policies that do not lapse will be liable on a death to CAT.

(8)- the insurance policies can either be term assurance, endowment, or whole of life policies, with the death benefit only passing to the surviving shareholders.

(9)- co-directors/partnership insurance using Own Life in trust must be supported by the following relevant documentation:

- (a) Buy/sell (or double option) agreement
- (b) Reciprocal agreement
- (c) Trust document

The equalisation of premiums is not a requirement once the policies are clearly effected as part of a commercial arms length arrangement.

Early payment of the proceeds of these policies on foot of total and permanent disability or critical illness will not be regarded as giving rise to a CAT liability. Similarly the proceeds of stand-alone critical illness policies will be exempted provided the criteria set out above are met. Finally, it is permissible to provide for the probable future increase in the value of the policyholder's shareholding provided that this aspect is common to all policyholders. It must be emphasised however, that any surplus over and above that utilised to purchase the deceased's shareholding will be liable to CAT.

#### **19.19 Government securities- Section 81 CATCA 2003**

Where section 81 securities are held in a unit trust that is being wound up but certain of the securities are not sold but are distributed in specie to the unit-holders then provided all other conditions laid down by Section 81 are fulfilled and the direct ownership of the securities commences at the instant the ownership of the units by the unit-holders ceases, the period of time unit-holders held the units will be treated as aggregable with the period they directly hold the securities.

#### **19.20 Interest on Claw-back of Relief's and Exemptions**

Certain CAT reliefs and exemptions can be wholly or partly clawed- back if an event occurs within a specified period following the gift or inheritance. Under Section 51(3) CATCA 2003 interest will only be charged on the additional tax from the date the relief or the exemption ceases to apply and not from the valuation date. Where a claw-back results from a sale of the property the date of sale is the date the relief or exemption ceases to apply.

#### **19.21 Certificate of Personal Discharge from CAT-Section 61 CATCA 2003**

The Commissioners may give a certificate to an applicant who is a person accountable, but not primarily accountable, for the payment of tax, discharging that applicant from any other claim in respect of the gift or inheritance in question. The certificate - Form C.A. 44 - is issued where the Commissioners determine that the full tax has been paid on the gift or inheritance and that no further tax will arise in respect of that gift or inheritance.