

NOTES FOR GUIDANCE

CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

**(as amended by subsequent Acts up to and including the
Finance (No.2) Act 2023)**

Part 1: Preliminary



These notes are for guidance only and do not purport to be a definitive legal interpretation of the provisions of the Capital Acquisitions Tax Consolidation Act 2003 (No. 1 of 2003) as amended by subsequent Acts up to and including the Finance (No.2) Act 2023.

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PART 1 PRELIMINARY

Overview

This Part contains the short title of the Act, defines certain terms and sets out rules for the construction of certain references used in the Capital Acquisitions Tax Consolidation Act 2003.

1 Short title

This section contains the short title of this Act.

2 General interpretation

This section provides for the interpretation of terms and expressions used in the Capital Acquisitions Tax Consolidation Act 2003. The various definitions apply unless the context requires otherwise. Readers should also be aware that section 18 of the Interpretation Act 2005 contains general rules for the construction of statutes which apply unless the contrary intention appears. (1)

The definitions of “accountable person”, “benefit”, “child”, “Collector”, “Commissioners”, “donor”, “donee,” “gift”, “inheritance”, “market value”, “minor child”, “personal property”, “personal representative”, “property”, “real property”, “regulations”, “relative”, “return”, “share”, “successor”, “tax”, “valuation date” and “year of assessment” are self-explanatory. Definitions are also included for the purposes of the amendments to the Act by the Finance (No. 3) Act 2011 following the enactment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, e.g. “child of the civil partner”, “civil partner”, “civil partnership”, “decree of dissolution” and “surviving civil partner”.

An “**absolute interest**” includes the interest of a person who has a general power of appointment over property. An absolute interest is the greatest interest which a person may have in property. A person who has an absolute interest in property can deal with or dispose of that property as he/she pleases.

The “**date of the disposition**” in the case of a will or codicil or an intestacy, or a benefit under Part IX or section 56 of the Succession Act 1965, or an analogous benefit under the law of another territory, is defined as the date of death of the deceased person concerned. Part IX of the Succession Act 1965 deals with the legal right of the spouse of a deceased person who dies leaving a will. It also makes provision for the child or children of such a person. Section 56 deals with the right of the surviving spouse to require the dwelling and household chattels to be appropriated towards satisfaction of any share of the surviving spouse.

Where the disposition consists of the failure to exercise a right or power, the “date of the disposition” is the date of the latest time when the disponent could have exercised the right or the power if that disponent were not *sui juris* i.e. not having full legal capacity (e.g. a minor) and not under a physical disability.

In any other case, the “date of the disposition” is the date on which the act (or, where there is more than one act involved, the last act) of the disponent was done by which that disponent provided or bound himself/herself to provide the property comprised in the disposition.

The “**date of the gift**” is defined as the date of the happening of the event on which the donee, or any person in right of that donee or on that donee’s behalf, becomes beneficially entitled in possession to the benefit. (An executor or assignee, for example, can claim in right of a donee. A guardian of a minor child can claim on behalf of a minor child).

In the majority of cases, the “**date of the inheritance**” will be the date of death of the disponent. Where an inheritance is taken on the death of a life tenant, “the date of the inheritance” will be the date of death of the life tenant.

The inheritance may arise on an “**event**” referred to in *section 3(2)*. The “date of the inheritance” is the date of the event under which a person takes the inheritance.

Where a gift becomes an inheritance by reason of its being taken under a disposition where the date of the disposition is within 2 years prior to the death of the disponent, the “date of the inheritance” is the date on which the gift was made.

A “**discretionary trust**”, in addition to its normal meaning under general law, whereby the trustees have discretion to make payments from the trust for the benefit of one or more of the beneficiaries named in the trust instrument, includes a trust where property is held on trust to accumulate the income or part of the income of that property. Any entity which is similar in its effect to a discretionary trust (such as “foundations”, the European equivalent of trusts) shall be treated as a discretionary trust irrespective of how it is described in the place where it is established. Any reference in this Act to trustees in relation to a discretionary trust shall be deemed to include persons acting in a similar capacity to trustees in relation to such an entity.

The term “**disponent**” means the person who directly or indirectly provided the property comprised in a disposition. Where more than one person provided the property, each person is deemed to be the disponent to the extent that he/she provided the property.

The definition of the term “**disposition**” is very wide. It includes, for example, the payment of money, the allotment of shares in a company, the grant or the creation of any benefit, the exercise of a general power of appointment in favour of any person other than the holder of the power, and a *donatio mortis causa*, i.e. a gift made in contemplation of death. It also includes a will or other testamentary disposition (e.g. a codicil to a will), an intestacy (whether total or partial), the payment of a share as a legal right under Part IX of the Succession Act 1965 to a deceased person’s spouse or civil partner or the making of provision for the widow/surviving civil partner or child(ren) of a deceased person under section 56 or section 117 of the 1965 Act or an analogous share or provision paid or made on the death of a deceased person to or for the benefit under the law of another territory or a resolution passed by a company that comes within the scope of *subsection (3)*.

The expression “**entitled in possession**” means having a *present* right to the enjoyment of property as opposed to having a *future* such right.

Example

A, by deed, makes a gift of property to B for life and after B’s life to C absolutely. B, in this example, is entitled in possession to the property. C, on the other hand, has an interest in expectancy in the property.

A person is also deemed, for the purposes of the Act, to be entitled in possession to an interest or share in a partnership, joint tenancy or estate of a deceased person in which that person is a partner, joint tenant or beneficiary, as the case may be. However, that person is not deemed to be entitled in possession to an interest in expectancy until an event happens whereby the interest ceases to be an interest in expectancy.

The expression “entitled in possession” is crucial, in the context of gift and inheritance tax, because a person will only be deemed to take a gift or an inheritance where that person becomes beneficially entitled in possession to a benefit under a disposition (see *sections 5(1)* and *10(1)*).

A “**general power of appointment**” includes every power, right or authority, whether exercisable only by will or otherwise, which enables the holder of the power to appoint or dispose of property to whoever he/she thinks fit or to obtain such power, right or authority. It does not, however, include any power exercisable by an individual solely in a fiduciary capacity under a disposition not made by that individual.

A general power of appointment is equivalent to absolute ownership (see definition of “absolute interest”).

The expression “**interest in expectancy**” includes an estate in remainder or reversion and every other future interest, whether vested or contingent, but does not include a reversion expectant on the determination of a lease. An estate in remainder or in reversion relates to a *future* interest in property. An example of a remainder interest is where a person receives a gift or an inheritance of property after an intervening life interest. A reversion is an interest in property which at some future time is to revert to the original owner of the property. This would arise where A grants an interest in property to B for a period of 5 years with a provision in the deed granting the interest that the property reverts to A at the end of the 5 year period.

A “**limited interest**” means:

- an interest (other than a leasehold interest) for the duration of a life or lives or for a period of certain duration e.g. 10 years, or
- any other interest which is not an absolute interest.

A “**local authority**” includes, for example, a county council, a city council and a town council.

A “**special power of appointment**” means a power of appointment which is not a general power of appointment (see definition of “general power of appointment”).

Any resolution altering the rights of individual members of the company may be considered a disposition (3) by a member(s) who lost out as a result in favour of others who gained but only if he/she/they could have prevented it by voting against it or otherwise (e.g. by inducing his/her/their nominees to vote against the resolution or by exercising any right vested in him/her/them by the articles of association to veto the resolution).

For the purposes of the Act, and subject to section 2A, the following persons are “relatives” of another person:(4)

- the spouse of that other person (4)(a)
- the father, mother, child, uncle, or aunt of that other person, (4)(b)
- any child (other than that other person), and any child of a child, of any person who is, by virtue of *paragraph (a) or (b)* a relative of that other person, (4)(c)
- the spouse of a person who is by virtue of paragraph (b) or (c) a relative of that other person, (4)(d)
- the grandparent of that other person. (4)(e)

See notes on *section 5(4)* and *section 10(2)* regarding the rules concerning “full consideration” given for a gift or an inheritance and on *sections 16, 21* and *27* in relation to the valuation of shares in a private company

Under *subsection (1)*, “child” includes an adopted child. An adopted child is deemed to be the child of the person or persons who adopted him/her. He/she is, therefore, entitled to the Group A threshold in respect of a gift or inheritance from his/her adoptive parent(s). An adopted child has all the relationships to relatives of his/her adoptive parent(s) (e.g. the children of the person(s) who adopted him/her are regarded as his/her brothers and sisters, the parents of the person(s) who adopted him/her are regarded as his/her grandparents). It is also provided that the relationship that the adopted child had with his/her natural parent or parents is deemed to have ceased (but see note on *paragraph 10 of Schedule 2*). (5)

A reference to a person being resident in the State on a particular date means being resident here in the year of assessment in which that date falls. It will not be necessary to wait until the end of that year to determine whether or not a person is resident here. [From 1 January 2002 onwards, a year of assessment is a calendar year.] (6)

These provisions set out how references in the Act to enactments, Parts, Chapters, sections, Schedules, subsections, paragraphs, subparagraphs, clauses or sub-clauses are to be construed. (7) - (9)

2A Provisions relating to affected persons

This section was introduced by Finance (No.2) Act 2023 and includes the definitions of “**affected person**”, “**social father**” and “**social mother**”. These definitions were previously provided in section 2. (2A) (1)

“**Act of 1965**” is defined to mean the Succession Act 1965.

“**affected person**” is to be construed in accordance with section 4B(11) of the Act of 1965. Section 4B(11) provides that a person is an affected person for the purposes of the Succession Act 1965 where -

(a) as a result of the giving of information that was false or misleading, the name of a person other than his or her mother was entered in the register of births as his or her mother, and

(b) the person named as mother and, if applicable, father in the entry assumed the role of a parent in relation to him or her and treated him or her as her or their lawful child, whether or not the entry has been corrected or cancelled pursuant to Part 3B or section 63, 64 or 65 of the Act of 20041.

“**social father**” and “**social mother**” shall have the same meanings as they have in section 4B(12) of the Act of 1965. Section 4B(12) of that Act defines these terms as follows:

- '**social father**' means, in relation to an affected person, the man named in the entry in the register of births referred to in subsection (11) as his or her father;
- '**social mother**' means, in relation to an affected person, the woman named in the entry in the register of births referred to in subsection (11) as his or her mother

For the purposes of section 2A(3), the relationships between an “affected person” and his or her birth parents, and between that “affected person” and his or her “social parents”, are to be construed in accordance with section 4B(1) of the Succession Act 1965. (2A)(2)

Section 4B(1) of the Succession Act 1965 essentially provides that the relationship between an affected person and his or her social mother and/or social father is deemed to be the same as the relationship between the affected person and his or her birth mother and father for the purposes of succession. In addition, it provides that all other relationships shall be determined accordingly.

Where a person takes a benefit from a disponent to whom he or she is related by virtue of section 4B(1) of the Act of 1965, that person is to elect as to whether or not the same relationship should apply for the purposes of capital acquisitions tax legislation. (2A)(3)

Where a person elects under section 2A(3) for the relationship that arises by virtue of section 4B(1) of the Succession Act 1965 to apply in relation to capital acquisitions tax, that relationship is to apply for the purposes of any benefit the person takes from the same disponent. **(2A)(4)**

3 Meaning of “on a death”

Summary

This section explains what is meant by the expression “on a death” which is the basis of the distinction between a gift and an inheritance. If a benefit is taken “on a death”, it is an inheritance (see **section 10(1)**). If it is taken “otherwise than on a death”, it is a gift (see **section 5(1)**).

Details

This section sets out what precisely is meant by the expression “on a death”.

The most obvious example is a legacy taken under a will or a benefit taken by a person under a deed when a life tenant dies. If a person takes a benefit at a time ascertainable only by reference to the death of a person, it will also be an inheritance e.g. a benefit taken under a will or deed to come into effect 1 year after the death of another person. **(1)(a)**

A person also becomes entitled “on a death” under a disposition where the date of the disposition is the date of death of the disponent. This arises in the case of a *donatio mortis causa* (i.e. a gift made in contemplation of death), a will or intestacy or a payment of a legal share under Part IX of the Succession Act 1965 to the surviving spouse or children of the deceased or any similar payment made, on the death of the deceased, to or for the benefit of any person under the law of another territory. **(1)(b)**

Where the benefit would otherwise be a gift but is taken under a disposition made within 2 years before the death of the disponent, it is treated as being taken “on a death” and thus subject to inheritance tax. **(1)(c)**

The taking of a benefit on the happening of an event referred to in **subsection (2)** after the cesser of an intervening life interest is also regarded as being “on a death”. **(1)(d)**

Examples of the events referred to in **subsection (2)** are:

- a benefit taken on the death of a life tenant; **(2)(a)**
- a benefit taken when a trustee appointed property to him/her; **(2)(b)**
- where a person takes property from time to time under a discretionary trust; **(2)(c)**
- a benefit paid to a person on the happening of a contingency e.g. A creates an *inter vivos* settlement (i.e. a settlement between living persons) where, following his life interest in the settlement, the property passes to his son, B, subject to the contingency that, in the event of his daughter, C, marrying, the son is to pay her €500,000. On her marriage, C takes an inheritance from A as disponent **(2)(d)**