

NOTES FOR GUIDANCE

CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

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

Part 4: Value of Property for Tax


	<p>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.</p>
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PART 4 VALUE OF PROPERTY FOR TAX

Overview

This Part deals with matters such as the market value of property, the market value of certain shares in private trading companies, the taxable value of a taxable gift or taxable inheritance, contingencies affecting gifts or inheritances and the valuation date for tax purposes.

The value of a gift or an inheritance will normally be its open market value on the valuation date.

In the case of unquoted shares or securities, it is assumed that all the relevant information, which a prudent purchaser might require, is available to him/her.

Special provision is made for the valuation of shares in a private company (as defined) “controlled” by a donee or successor. “Control” includes control through a combination of some or all of family shareholdings, powers of voting or of dictating dividend policy, nominee holdings, trust holdings or holdings of other controlled companies. Where control, as defined, exists, the element of control is taken into account in arriving at the value of the shares.

The value on which tax is charged is also dealt with. In the first instance, debts and other liabilities to which the gift or inheritance is subject are deducted from the market value, the balance remaining being called the “encumbrance-free value”. If the donee or successor takes property comprised in the gift or inheritance as absolute owner, any consideration given by him/her is then deducted. (A different rule applies where the donee or successor takes a limited interest – see notes on *section 28*).

If the benefit of a gift or of an inheritance taken by a person is to cease on the happening of a contingency, the contingency is to be ignored in computing tax. If the contingency happens, the tax will be adjusted as if the person took a limited interest for the actual period he/she had the property. Tax will, however, be payable in respect of any property substituted for the gift or inheritance which was given up.

As regards the date on which property is to be valued, the donee of a gift is normally entitled from the date of the gift and this date is the usual valuation date. For inheritances, the valuation date is, normally, the date of ascertainment of the residue or other benefit and of its retention for the benefit of the successor.

26 Market value of property

Summary

This section provides that the market value of any property required to be valued under the Act, other than certain shares in private companies which are dealt with in *section 27*, is the price which the property would fetch if sold in the open market, on the date on which it is to be valued, in circumstances calculated to result in the best price for the vendor.

The section makes provision for the inspection of property and the payment of the costs of valuation where the Revenue Commissioners nominate a valuer to prepare a valuation.

In valuing unquoted shares or securities, it is assumed that all the relevant information which a prudent purchaser might require is available to him/her.

Details

“unquoted shares or securities” in *subsection (6)* means shares or securities which are not dealt in on a stock exchange. (1)

The open market value to a vendor of the property is the basic criterion in arriving at the value of property required to be valued at market value for the purpose of the tax, except where (as in *section 27*) different provisions apply. (2)

In the absence of an actual sale of property on the date on which such property is to be valued, the market value will normally be a matter for negotiation between the parties and the Revenue Commissioners. While the price which would be realised on a notional sale is the price which, in the opinion of the Revenue Commissioners, the property would fetch, there is a right of appeal against their opinion (*sections 66 and 67*)—

- to the Land Values Reference Committee, in the case of real property (which includes leasehold property),
- to the Appeal Commissioners, in respect of other property, or
- ultimately, to the Courts.

In arriving at their estimate of market value of property, the Commissioners must take no account of the possibility of the property realising less than its best price by being sold as a block of property, rather than, if it is more profitable to do so, in separate lots. If, for example, a large block of shares were placed on the market on one day, the price would be depressed. The possibility of a “flooded market” is to be ignored. (3)

The Revenue Commissioners can use all means and information available to ascertain the market value. (4)

Any person having custody or possession of property required to be valued for tax purposes must, if given reasonable notice, allow reasonable access to the property for the purpose of such inspection, subject to a penalty for non-compliance, which is provided for in *section 58(2)*.

The Revenue Commissioners will pay the costs of experts who are retained by them to assist them in valuing property. (5)

In valuing unquoted shares or securities, it will be assumed that there is available to any prospective purchaser of the shares or securities all the information which a prudent prospective purchaser might reasonably require if he/she were proposing to purchase them from a willing vendor by private treaty and at arm’s length. (6)

27 Market value of certain shares in private companies

Summary

This section makes special provision for the valuation of shares in a private company (as defined) which is deemed to be controlled by the donee or successor. “Control” includes control through a combination of some or all of family shareholdings, powers of voting or of dictating dividend policy, nominee holdings, trust holdings or holdings of other controlled companies. Where control, as defined, exists, this is taken into account in arriving at the value of the shares. The section also defines other terms used in the section. Where no question of control arises, shares in such a company are valued in accordance with *section 26*.

Details

“group of shares”, in relation to a private company, means the aggregate of the shares in the company (1) of the donee or successor, the relatives of the donee or successor, nominees of the donee or successor, nominees of relatives of the donee or successor, and the trustees of a settlement whose objects include the donee or successor or relatives of the donee or successor;

“nominee” includes a person who may be required to exercise his/her voting power on the directions of, or who holds shares directly or indirectly on behalf of, another person;

“private company” means, broadly, a company that is under the control of not more than 5 persons unless at least 35% of the voting power is held by the public and the company is quoted on the official list of a recognised stock exchange;

“share”, in relation to a private company and in addition to the interpretation of share in *section 2(1)*, includes every debenture, or loan stock, issued otherwise than as a part of a transaction which is wholly and exclusively a bona fide commercial transaction.

The market value of each share in a company which (after taking the gift or inheritance) is (2) controlled by the donee or successor is to be ascertained as follows:

- ascertain the value of the controlled “group of shares” i.e. all shares owned by the donee/successor, relatives, civil partners and any children of that civil partner or any children of those children, civil partners of the donee/successor’s relatives, nominees and trustees as a single majority holding, and
- apportion the value of the group as between the shares acquired and any other shares concerned having due regard to class rights.

For example, a donee or successor owns 10% of the shares and relatives own another 80%. The value of the total 90% is calculated and the value of the 10% holding is taken as 1/9th of that value. In the absence of *subsection (1)*, the 10% holding would be valued as a minority holding.

As between shares of the same class, the apportionment is made on the basis of nominal amounts.

If the controlled group of shares includes different classes of shares (e.g. A ordinary, B ordinary, preferences, etc.), regard will be had to the rights attaching to each class.

For the purposes of calculating the market value of shares in a controlled private company (Company A) which owns shares in another private company (Company B) for the purposes of *subsection (1)*, it must first be established whether Company B is a company controlled by the donee or successor. If it is, then the shares held by Company A in Company B must be valued on the basis that Company A held the same element of control over Company B as was held by the donee or successor and his/her relatives, etc.),

A company is deemed to be controlled by the donee or successor if any one or more of the following control (3) it, i.e.:

- the donee or successor;
- his/her relatives (see note on *section 2(4)*);
- his/her civil partner;
- children of his/her civil partner and those children’s children;
- civil partners of his/her relatives;
- his/her nominees;
- nominees of his/her relatives;

- trustees of a settlement whose objects include him/her or his/her relatives;
- any company similarly controlled by him/her (regarded for this purpose as being “related” to him/her).

For the purposes of the section, a company will be deemed to be under the control of not more than 5 persons if any 5 or fewer persons together exercise, or are able to exercise, or are entitled to acquire control, whether direct or indirect, of the company. For this purpose, the following persons will be treated as a single person: **(4)(a)**

- persons who are relatives of any other person together with that other person;
- a person who is the civil partner of any other person together with that other person;
- children, or children of the children, of a civil partner of any other person together with that other person;
- the civil partners of relatives of another person together with that other person;
- persons who are nominees of any other person together with that other person;
- persons in partnership; and
- persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person.

A person will be deemed to have control of a company if he/she has any of the following powers:

- voting control which arises when he/she has a majority of the votes, or is capable (through, for example, shares held for him/her by a bare trustee) of directing others how to vote on any or all questions affecting the company as a whole. Some shareholders are, by the company’s articles of association, denied voting rights except on certain questions such as a winding-up. If a shareholder has a requisite majority of votes capable of deciding such a question, he/she will have control; **(4)(b)(i)**
- power to exercise or control the exercise of the powers of— **(4)(b)(ii)**
 - ❖ a board of directors;
 - ❖ a governing director; or
 - ❖ to nominate a majority of the board, or a governing director, or to veto the appointment of a director, or any similar powers. Thus, a person has control if he/she is a sole director with full powers of a board of directors, or if he/she is a governing director;
- receipt of dividend: a person is deemed to control the company through receipt of (or entitlement to) more than 50% of the dividends, interest, etc. of the company. Normally, such a person has voting control, or more than 50% of the nominal value of the capital, but it is not unusual to find a class of shares which are non-voting but eligible for dividends or interest; **(4)(b)(iii)**
- ownership of capital: control is deemed to exist where a person has an absolute or limited interest in at least 50% of the nominal value of the company’s shares. **(4)(b)(iv)**

The 4 situations outlined above are intended to cover the various circumstances in which a private company can be controlled by a person (or persons). Unless the company is under the control of 5 or fewer persons, the section does not apply, and the shares will be valued under the normal market value rules in *section 26*

28 Taxable value of a taxable gift or inheritance

Summary

This section shows how the taxable value of a gift or inheritance is to be calculated. Special provision is made in **section 89** for agricultural property. In the first instance, debts and other liabilities to which the gift or inheritance is subject are deducted from the market value. The balance remaining after deducting such debts and liabilities is called the “incumbrance-free value”. If the donee or successor takes property comprised in the gift or inheritance as absolute owner, any consideration given by him/her is then deducted.

Where the donee or successor takes a limited interest in property, the following rules apply:

- the incumbrance-free value is first reduced for tax purposes according to the rules and tables in **Schedule 1** to the Act and to the age and sex of the donee or successor or the period of time for which the interest is to last, or otherwise, as the case requires, and
- from such reduced value, the consideration (if any) is deducted

The section also sets out what debts may be deducted, and provides for the apportioning of debts and consideration in certain circumstances.

Details

The “incumbrance-free” value is the market value of property at the valuation date less the liabilities, costs (1) and expenses that are properly payable out of the taxable gift or taxable inheritance. Where, for example, property is given to a person under a will and there is no incumbrance on the property, the market value of the property and the incumbrance-free value is the same. However, where property is given to a person subject to a loan secured on that property, which the donee or successor is obliged to take over, or there are costs or expenses which have to be paid out of the property, those liabilities can be deducted from the market value of the property in arriving at the incumbrance-free value

Where the donee or successor takes an absolute interest, the taxable value (i.e. the net amount on which (2) he/she will pay tax) will be the incumbrance-free value if he/she gives nothing in return for the gift (i.e. if he/she gives no consideration). However, if he/she does give consideration, the taxable value will be the incumbrance-free value less the amount of the consideration.

Consideration allowable includes—

- a liability of the donor taken over personally by the donee or successor (e.g. a loan owed by the donor to a bank which the donee promises to pay);
- any other liability to which the gift or inheritance is subject under the terms of the disposition (e.g. a payment made by a donee to a third party).

Some liabilities can be both incumbrances on the property and consideration given by the donee or successor. Only one deduction will be given for such liabilities.

Future debts allowable as a deduction are discounted to arrive at their present value. Such debts would (3) not, however, be deductible if they were only contingently payable (see **subsection (5)(a)**).

Where a donee or successor takes a limited interest (i.e. a life interest, or an interest for a period certain), (4) the market value of the property of which the gift or inheritance consists is ascertained and any charges payable out of the property itself are deducted to arrive at the incumbrance-free value. The latter value is then looked at in the light of the rules and tables in **Schedule 1** and reduced accordingly. If consideration has been given, the consideration is deducted from the reduced value.

Certain liabilities, costs and expenses are not deductible. They include—

(5)(a)

- contingent liabilities. For example, A gives lands to B, subject to B paying €20,000 to C on C's marriage. B pays tax on the value of the lands without reference to the €20,000. If and when C marries and B must pay the €20,000, an adjustment of tax may be claimed by the donee or successor;
- debts, etc. for which the donee or successor can claim reimbursement from any source; (5)(b)
- liabilities created by the beneficiary, e.g. a mortgage of his/her expectant interest created by a person who is entitled to a future interest; (5)(c)
- the capital acquisitions tax on the gift or inheritance, or the cost of raising the tax e.g. interest on a bank loan raised to pay the tax; (5)(d)
- incumbrances relating to property exempted from tax - such incumbrances cannot be used to reduce the taxable value of property which is not exempt; (5)(e)
- incumbrances relating to property exempted from tax - such incumbrances cannot be used to reduce the taxable value of property which is not exempt; (5)(f)
- certain liabilities relating to foreign property comprised in the gift or inheritance, where the charge to tax is restricted to Irish property; (5)(g)
- foreign tax in respect of which relief against double taxation is given by way of a credit against Irish tax under section 106 or 107.

Where the charge to tax is restricted to Irish property, only that part of the consideration (if any) which is attributable to the Irish property is allowed as a deduction. (6)

A deduction will not be made under the provisions of the section— (7)

- more than once for the same liability, , costs, expenses or consideration in respect of all gifts or inheritances taken by the donee or successor from the donor, or
- for any liability, costs, expenses or consideration, in respect of which a proportion of such liability, costs, expenses or consideration is allowed under section 89(2)(ii) or (iii) i.e. where debts or consideration have been restricted in proportion to any agricultural relief given, any amount disallowed cannot be deducted against any other property comprised in the gift or inheritance.

Where a liability, as defined, is attached to the subject matter of the gift or inheritance which has the effect of depriving the donee or successor of the benefit of the property or, more usually, of part of the property (e.g. a devise of a farm to A absolutely, subject to rights of residence, support and maintenance in favour of another person), the deduction to be made in this type of case is a “slice” of the property sufficient to provide for the liability. Thus, if the annual value of the rights is €10,000 per annum and if the annual value of the farm (i.e. the notional letting value) is €20,000, the deduction will be one-half of the value of the farm, which is the “appropriate part” within the meaning of section 5(5). (8)

When the rights cease, a claim for inheritance tax will arise on the benefit of the cesser of the rights under section 37. The fraction of the property may not, however, be the same on the latter occasion because, if the farm is then more productive, it would yield an enhanced income.

The type of liability involved in *subsection (8)* is one which deprives the donee or successor of the full enjoyment of the gift or inheritance, or any proportion of it. In effect, the tax is postponed to the extent that the enjoyment of the property is postponed. (9)

Where a person pays consideration now for a benefit to arise in the future, the deduction to be made for consideration will be proportionate to the value of the expectant interest at the date of settlement. (10)

Example

A agrees to settle property worth €200,000 on himself for life, with remainder to B, who, in consideration of the remainder interest, pays €50,000 immediately to A. If, on an actuarial calculation, the interest in expectancy given to B has a present value of €100,000, B will be treated, when the property becomes taxable in his/her hands (i.e. on his taking an interest in possession on A's death), as having paid consideration equal to one-half of the value of the inheritance i.e. he paid €50,000 for something worth €100,000. Thus, if the property is, on the life tenant's death, worth €300,000, a deduction of €150,000 will be allowed for partial consideration given by B.

No actuarial tables are provided in the Act for the valuation of an interest in expectancy. Normal actuarial principles will apply. The value will be based on the nature and income of the property and the age and health of the life tenant.

Where a liability is an incumbrance on any particular property, it should, as far as possible, be deducted from that property. (11)

29 Contingencies affecting gifts or inheritances

Summary

This section deals with a gift or inheritance given to a person which is to cease on the happening of a contingency. The contingency is ignored for the purpose of computing tax on that gift or inheritance. If the contingency happens, the tax will be adjusted as if the person took a limited interest for the actual period during which he/she enjoyed the property.

If, however, a substituted gift or inheritance is taken by a donee or successor on the happening of the contingency, that substituted gift or inheritance will be liable to tax.

Details

Where a gift or inheritance is given to a person which is to cease on the happening of a contingency (other than the revocation of a gift subject to a power of revocation under *section 39*), the contingency is ignored for the purpose of calculating tax on that gift or inheritance. If, however, the contingency happens, tax is calculated on the basis that the donee or successor took an interest in the property for a period equal to the actual duration of his/her actual beneficial enjoyment of the property. (1)

Example

Property valued at €100,000 is given to a woman aged 63 for life or until the marriage of her eldest son. She is taxed on a life interest in €100,000 for a female aged 63 in accordance with *Schedule 1* as follows:

$$€100,000 \times 0.6 = €60,000.$$

If her son marries after 10 years, the value of the benefit to the woman would be reduced to an interest in €100,000 for 10 years as follows:

$$€100,000 \times 0.4913 = €49,130$$

If, on the marriage of her son, she was given a substituted benefit (e.g. a sum of money) this would be taxable as a new gift or inheritance. (2)

30 Valuation date for tax purposes

Summary

This section lays down rules for ascertaining the date on which property, taken as a gift or an inheritance, is to be valued. In respect of gifts, the donee is normally entitled from the date of the gift and this date is the usual valuation date. For inheritances, the valuation date is, normally, the date of ascertainment of the residue or other benefit and of its retainer for the benefit of the successor.

Details

The date of the gift is the valuation date for a taxable gift except for the type of gift dealt with in **(1) subsection (7)** i.e. a disposal of property which is comprised in an inheritance before the valuation date for the inheritance has arrived.

The “date of the gift” is defined in **section 2** as the date of the event on which the donee becomes beneficially entitled in possession.

The date of death of the person on whose death an inheritance is taken is prescribed as the valuation date in the **(2)** following cases:

- a *donatio mortis causa* (i.e. a gift made in contemplation of death) which becomes effective only if that death occurs;
- an inheritance taken by a person when a disponent, who had power to revoke the disposition, dies without revoking it. This is the type of case referred to in **section 39** and, if the power ceases on the disponent’s death, the property is deemed to vest beneficially in possession in the beneficiary “on a death” under **section 3** and is thus an inheritance

In these exceptional cases, the “date of the inheritance”, as defined in **section 2**, is the same as the valuation date.

Where a gift is taken under a disposition made within 2 years of the disponent’s death, it becomes an inheritance. **(3)** As the donee clearly took the gift at the date of the gift, the valuation date for the inheritance will be the date of the gift (under **subsection (1)**). This is the date on which the property is valued (as for gift tax), but interest on the inheritance tax, under the provisions of **section 51(7)**, is not charged for the period from the valuation date to the date of death of the disponent.

In the case of any other taxable inheritances (which covers most inheritances), the valuation date is the **(4)** earliest of the following dates:

- the earliest date on which the successor’s inheritance may be lawfully retained by him/her (i.e. set aside for him/her or given to him/her); **(4)(a)**
- the date of the actual retention (e.g. a son to whom lands are devised might enter the lands and retain them for his own benefit on the date of death of his father). If the estate was solvent, the later assent by the executor would be a mere formality; **(4)(b)**
- the date of delivery, payment, satisfaction or discharge of the inheritance (e.g. the actual date of payment or part-payment of a legacy – see **subsection(5)**); **(4)(c)**
- payment, delivery, etc. to another person on behalf of the successor or to a person claiming in right of (e.g. his/her executor or assignee) or on behalf of(e.g. his/her guardian) the successor is equivalent to payment, delivery, etc. to the successor. **(4)(d)**

Where advances are made out of an inheritance, each payment in advance or part payment is (5) treated as being retained on the date of such payment as if it were a separate inheritance. Thus, if a successor is entitled to a residuary bequest and receives shares worth €100,000 on 1 March 2004, cash amounting to €10,000 on 1 June 2004 and the balance on 1 August 2004, the valuation date will, respectively, be 1 March, 1 June and 1 August for the 3 separate parts of the inheritance.

The Revenue Commissioners have power to determine (subject to an appeal under the provisions of *subsection (9)* below) the valuation date in respect of the whole or part of the inheritance. (6)

Where a person makes a gift of his/her share in the estate of a deceased person before the distribution has actually occurred, the valuation date of the gift will be the same as the valuation date of his/her inheritance. (7)

In doubtful cases, the Revenue Commissioners have the power to determine the valuation date by agreement with the taxpayer. (8)

The normal appeal procedures available under *section 67* apply in relation to an appeal against a determination issued by the Revenue Commissioners under *subsection (6)*. (9)