


## NOTES FOR GUIDANCE

# CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

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

### Schedules

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|  | <p><b>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.</b></p> |
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## Schedules

### *Overview*

There are 3 Schedules to the Act.

- **Schedule 1** deals with the valuation of limited interests i.e. life interests and interests for a period of certain duration.
- **Schedule 2** contains provisions dealing with the computation of tax.
- **Schedule 3** contains amendments to other enactments consequential on the passing of this Act.

## **SCHEDULE 1: Valuation of limited interests**

### *Summary*

**Schedule 1** is divided into 3 Parts.

- **Part 1** lays down the rules for ascertaining the value of limited interests according to age and gender in the case of life interests, and according to the period of time in the case of an interest for a period of certain duration.
- **Parts 2 and 3** contain the 2 tables required for valuing those limited interests.

### *Detail*

Section 28(4) provides that where the gift or inheritance is a limited interest, the value of that limited interest in a capital sum equal to the encumbrance-free value (i.e. the value of the capital of the property, less debts) will be ascertained in accordance with the Rules contained in Schedule 1. The Rules are as follows:.

#### **Part 1**

This rule provides that the value of an interest for a single life in a capital sum will be that sum multiplied by Rule 1 the factor, contained in column (3) or (4) of Table A, which is appropriate to the age and gender of the person in respect of the duration of whose life the interest is to be valued. Table A (in Part 2 of the Schedule) is based on actuarial statistics.

This rule provides a simplified method for valuing an interest for the joint continuance of 2 lives, employing Rule 2 the joint factor given in Table A in Part 2.

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| This rule is an extension of the method in rule 2 to the case of 3 or more lives.   | Rule 3       |
| Rules 4 and 5 provide a method for valuing an interest for the longest of 2 or more lives..   | Rule 4<br>&5 |
| This rule provides a method for valuing an interest for a period of certain duration. Table B in Part 3 of the Schedule is used. Paragraph (b) of rule 6 deals with valuing an interest for part of a year.                     | Rule 6       |
| This rule provides a simplified method of valuing an interest which is to endure for a life or lives, but is guaranteed for a period of certain duration.   | Rule 7       |
| This rule deals with the case of a limited interest which is given in such terms that the other rules cannot be applied. It provides that each payment on account of the interest is treated as a separate gift or inheritance. | Rule 8       |

### ***Part 2***

Part 2 contains Table A which sets out how the value of a life interest in a capital sum is valued for capital acquisitions tax purposes. The value of a life interest for the joint continuance of 2 lives is also provided for in the Table.

### ***Part 3***

Part 3 contains Table B which sets out how an interest for a definite period is valued for capital acquisitions tax purposes.

## **SCHEDULE 2: Computation of tax**

### ***Summary***

Schedule 2 contains provisions relating to the computation of capital acquisitions tax. The Schedule provides for 3 group thresholds:

- Group A €335,000
- Group B €32,500
- Group C €16,250

The group threshold applying in a particular case depends on the relationship of the donee or successor to the disponent.

The Group A threshold applies where:

- the donee or successor is, on the date of the relevant gift or inheritance the child, or minor child of a deceased child of the disponent/civil partner of the disponent, or
- the inheritance is taken by a parent of the disponent on the death of the disponent, and the interest taken is not a limited interest.

The Group B threshold applies where:

- the donee or successor is, on the date of the relevant gift or inheritance, a lineal ancestor, a lineal descendant (other than a child, or a minor child of a deceased child), a brother, a sister, or a child of a brother or of a sister of the disponent or
- a child of the civil partner of a brother or of a sister of the disponent.

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The Group C threshold applies where:

- the donee or successor (who is not a spouse/civil partner of the disponent) is not, on the date of the relevant gift or inheritance, entitled to the Group A or Group B thresholds.

Benefits taken by a beneficiary since 5 December 1991, which have the same group threshold as the current benefit, are aggregated for the purpose of calculating the capital acquisitions tax payable on that benefit.

A single 33% rate of tax applies for both gifts and inheritances.

Special provisions are made treating—

- a beneficiary who is the surviving spouse of a deceased person who was nearer in relationship to the disponent than the beneficiary,
- certain nephews and nieces,
- certain foster children, and
- certain adopted children,

as being more closely related to the disponent than their normal relationship to that disponent, in certain circumstances

### Details

This paragraph provides for the 3 group thresholds.. Para 1

This paragraph defines the term “value” as used in Part 1 of Schedule 2 by reference to the aggregation rules contained in paragraph 3. Para 2

This paragraph sets out how tax is to be calculated on a taxable gift or inheritance. The taxable value of taxable gifts and inheritances taken since 5 December 1991, which have the same group threshold as the current benefit, must be aggregated to calculate the capital acquisitions tax payable on that current benefit. Para 3

For example, a beneficiary taking a current gift or inheritance from a parent will only be required to take into account previous gifts or inheritances taken from a parent since 5 December 1991, for the purposes of calculating the tax, if any, payable on the current benefit.

This paragraph provides for the application of the 33% rate of tax to the portion of the taxable value of a gift or inheritance in excess of the relevant threshold amount. Para 4

Deleted by section 115(5) Finance Act 2012. Para 5

This paragraph provides that where, at the date of the gift or inheritance, a beneficiary is the surviving spouse/civil partner of a person who, at the date of his/her death, was nearer in relationship to the disponent than the beneficiary, the latter takes the deceased spouse’s/civil partner’s relationship for the purpose of determining the appropriate group threshold. Para 6

### Example

A, by will, gives all his property to his son’s wife B (A’s son had pre-deceased him). Under this paragraph, B is entitled to the Group A threshold.

This paragraph deals with favourite nephew/niece relief. Para 7

**“company”, “control”, “investment income”, “nominee”, “private company”, “private company controlled by the disponent”** and **“private non-trading company”** have the same meanings as they have in section 27 Para 7(1)

**“relevant period”** means—

- the period of 5 years ending on the date of the disposition. The date of the disposition is defined in section 2 and means, broadly, the date on which the disponent disposes of his/her property, whether in his/her lifetime or on his/her death. Thus, the date of the disposition in the case of a lifetime gift is the date of the transfer of property. In the case of a bequest of property by will, it is the date of the

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testator's death. For example, if a nephew has worked 5 years for his/her uncle immediately prior to his death, the nephew will be entitled to the relief in respect of business assets which he takes immediately on his uncle's death, or which he takes on the termination of a life interest in those assets given by his uncle to, say, the uncle's widow, for her life;

- the period of 5 years preceding the ending of the disponent's interest, in the case of a settlement of property made by the disponent on himself/herself for a limited period (usually for his/her life). For example, if an uncle in his lifetime settles business assets on trust for himself for life, with remainder to his nephew absolutely, the nephew need only have worked 5 years for his uncle prior to his uncle's death.

Reasonable periods of annual or sick leave are included in calculating the 5-year period.

For the purpose of computing tax on a gift or inheritance, a child of a brother or a sister or a child of the civil partner of that brother or sister of a disponent is deemed to be the child of that disponent— Para 7(2)

- where that child has worked substantially on a full-time basis for the disponent for the relevant 5 year period in carrying on, or in assisting in carrying on, the trade, business or profession of the disponent, and the gift or inheritance consists of property which was used in connection with that business, trade or profession,
- where that child has worked substantially on a full-time basis for a company (as defined) for the relevant 5-year period in carrying on, or in assisting in carrying on, the trade, business or profession of the company, and the gift or inheritance consists of shares in that company.

Where the trade, business or profession is owned directly by a disponent, the nephew or niece must have worked either— Para 7(3)

- a minimum of 24 hours a week for the disponent, at the place where that trade, business or profession is carried on, or
- a minimum of 15 hours a week for the disponent, at the disponent's place of business, where the trade, business or profession of the disponent is carried on exclusively by the disponent, his/her spouse and the nephew or niece concerned

Alternatively, where the trade, business or profession is owned by a company (as defined), the nephew or niece must have worked either—

- a minimum of 24 hours a week for the company, at the company's place of business, or
- a minimum of 15 hours a week for the company, at the company's place of business, where the business of the company is carried on exclusively by the disponent, his/her spouse and the nephew or niece concerned.

The lower minimum period of 15 hours work, compared with 24 hours, is intended to cover cases where the trade, business or profession involved might not be substantial (for example, a small farm) not requiring extensive work. Nevertheless, some minimum input of work by the nephew or niece into the trade, business or profession is required so that the relief may be given, and this is defined as 15 hours

Relief is not given to any nephew or niece of the disponent who takes a gift or inheritance of the assets of a trade, business or profession under an appointment made by the trustees of a discretionary trust set up by the disponent. Para 7(4)

This paragraph deals with certain marriage settlements created before 1 April 1975. It provides that where, on the cesser of a limited interest to which a parent of the donee or successor was entitled in possession, the donee or successor takes a gift or an inheritance under a "specified disposition", then, for the purpose of computing the tax payable on the gift or inheritance, the donee or successor is deemed to bear to the disponent the relationship of a child. Para 8

**"specified disposition"** is defined as a disposition—

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- the date of which is a date prior to 1 April 1975,
- in relation to which the disponent is a grandparent of the donee or successor, and
- in which the marriage of the parents of the donee or successor was, at the date of the disposition, expressed to be the consideration.

This paragraph provides that where a foster child receives a gift or inheritance from his/her foster Parent that foster child is entitled to the Group A threshold in respect of the gift or inheritance taken from his/her foster parent. Further, where a foster child receives a gift or inheritance from certain relatives of his/her foster parent, he/she will be entitled to the Group B threshold in relation to those gifts and inheritances. The paragraph contains the following definitions: Para 9(1)

**‘Childcare Regulations’** – this definition relates to the two sets of statutory instruments whereunder a child can be placed in a formal fostering arrangement. These are the Child Care (Placement of Children in Foster Care) Regulations 1995 (S.I. No. 260 of 1995) and the Child Care (Placement of Children with Relatives) Regulations 1995 (S.I. No. 261 of 1995). Both sets of regulations referenced in this paragraph are applicable.

**‘specified relative’** - the purpose of this new definition is to introduce the categories of relatives of the person providing the fostering arrangement. The amendment will ensure that when the person fostered receives gifts or inheritances from these ‘specified relatives’, the Group B threshold will apply.

This paragraph sets out the circumstances whereby a person, who has been placed in the foster care of another person pursuant to the Childcare Regulations, is deemed to bear to that other person the relationship of a child. This deemed relationship will apply, firstly, for the purposes of computing the tax payable on a gift or inheritance received from the person providing the foster care (i.e. the “foster parent”), and secondly, for the purposes of computing the tax payable on gifts and inheritances received from specified relatives of the person providing the foster care. The reference to gifts and inheritances from such specified relatives will ensure the group B tax-free threshold is available to a foster child in relation to gifts and inheritances received from the wider family unit of their foster parent. Para 9(2)

The paragraph will apply where a claim is made to the Commissioners. In practice, a claim can be made by filing a capital acquisitions tax return indicating that “Foster Child Relief” is to apply.

Two or more persons who are, or were, fostered by the same person under the Childcare Regulations shall, on the making of a claim to Revenue, be treated as siblings for the purposes of determining the applicable group threshold in relation to a taxable inheritance taken from the other. This will ensure that the Group B threshold is available to inheritances received from another individual who was fostered within the same family but is not a specified relative of the person providing the foster care. Para 9(3)

The paragraph provides for informal fostering arrangements A person receiving a gift or inheritance from the person providing the care (foster parent) or a specified relative of the foster parent must have been under their care for periods falling between the birth of the child in question and his/her 18th birthday which together amount to 5 years. Para 9(4)

Two or more persons who are, or were, fostered by the same person shall, on the making of a claim to Revenue, be treated as siblings for the purposes of determining the applicable group threshold in relation to a taxable gift or a taxable inheritance taken from the other. This will ensure that the Group B threshold is available to gifts and inheritances received from another individual who was informally fostered within the same family but is not a specified relative of the person providing the foster care. Para 9(5)

This paragraph provides that where an adopted child receives a gift or inheritance from a natural parent, that adopted child is entitled to the Group A threshold in respect of the gift or inheritance taken from his/her natural parent. Para 10

For the purposes of Schedule 2, a reference to a gift or an inheritance, or to a taxable gift or a taxable inheritance, includes a reference to a part of a gift or an inheritance, or to a part of a taxable gift or a taxable inheritance, as the case may be. Para 11

**SCHEDULE 3: Consequential amendments**

This Schedule substitutes references to the Capital Acquisitions Tax Consolidation Act 2003 for references to the Capital Acquisitions Tax Act 1976, or to sections dealing with capital acquisitions tax in various Finance Acts, which appear in legislation other than tax legislation (see, for example, section 2(4) of the Ethics in Public Office Act 1995).