

Exemption relating to qualifying expenses of incapacitated individuals

Capital Acquisitions Tax Manual Part 22

This document should be read in conjunction with section 84 CATCA 2003

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Introduction

Section 84 exempts gifts or inheritances taken exclusively for the purposes of discharging certain medical and related expenses of an individual who is permanently incapacitated by reason of physical or mental infirmity. Such a gift or inheritance is not taken into account in computing a CAT liability.

22.1 Qualifying conditions for the relief

The gift or inheritance must be taken by a person who is permanently incapacitated by reason of physical or mental infirmity.

The gift or inheritance must be given **exclusively** for the purpose of discharging qualifying expenses of the incapacitated person. In this regard it is the intention of the disponent providing the gift or inheritance that determines the availability of the exemption. In the absence of such an intention, it is not relevant that a beneficiary might decide, after receiving a gift or inheritance, to use it to discharge medical expenses.

The use of the gift or inheritance for any purpose other than the discharge of qualifying medical expenses does not qualify for the exemption. The exemption may be withdrawn where Revenue is not satisfied that the gift or inheritance was applied, or will be applied, in discharging qualifying expenses. It is not necessary that the entire gift or inheritance be used for this purpose, but any part used for any other purpose does not qualify for the exemption.

Qualifying expenses are those that relate to medical care including the cost of maintenance in connection with such medical care.

22.1.1 Appeal Commissioner's determination

An Appeal Commissioner made a determination on 18 June 2019 ([32TACD2019](#)) in which he took a different view than Revenue in relation to the requirement for the gift or inheritance to be taken **exclusively** for the purpose of discharging qualifying expenses of the incapacitated person. He determined that it was not the intention of the disponent (as argued by Revenue) in providing the gift or inheritance that determines the availability of the exemption. While Revenue did not appeal this determination to the High Court, this is not to be interpreted as agreement with the determination on Revenue's part. Revenue's position remains as set out in this TDM. An Appeal Commissioner's determination does not create a precedent in relation to the operation of tax law and does not preclude Revenue from refusing the exemption in other cases and from arguing its case before the Appeal Commissioners where the refusal of the exemption is appealed by the taxpayer.

22.2 Examples

Example 1

David has cerebral palsy. His father died leaving a provision in his will that a trust be established to provide for David's ongoing medical care for the remainder of his life. The trust funds have been utilised exclusively since that time to cover David's hospital charges, doctors' fees and medicines. As these are 'qualifying expenses', the exemption applies in relation to the inheritance.

Example 2

Laura was born totally deaf. Her uncle left her a lump sum in his will to which he assigned no particular purpose or conditions. Laura went on to spend the money on cochlear implant treatment. As there is no evidence that her uncle intended, either by will or otherwise, to provide the benefit exclusively for Laura's medical and related expenses, this inheritance does not qualify for the exemption.

Example 3

Eileen is elderly and has been diagnosed with dementia. On the advice of her doctors she now requires the round-the-clock care that can be provided by a nursing home. Her four children have agreed in writing that they will each contribute to the costs of their mother's nursing home care. These gifts qualify for the exemption.

Example 4

Brendan lost his leg in a motorcycle accident. His mother left him a legacy in her will to specifically support his recovery from the accident. While the majority of the benefit was spent on rehabilitation expenses such as physiotherapy, prosthesis costs and counselling, Brendan also used some of the legacy for a deposit on an apartment. The exemption applies only to the medical and related expenses. The benefit used for the apartment deposit is a taxable inheritance and may result in a tax liability depending on any previous gifts and inheritances received by Brendan under the Group A threshold.

Example 5

Eoghan was diagnosed with multiple sclerosis a number of years ago and requires ongoing medical care. His father died intestate last year and, as his sole beneficiary, Eoghan inherited the total of his father's estate. While Eoghan has used some of his inheritance to cover medical expenses and related expenses associated with his condition these will not qualify for the exemption as there is no evidence that his father intended, by will or otherwise, to provide the benefit of his estate exclusively for this purpose.