

A Guide to Changes to Probate & Capital Acquisitions Tax

Courts Service



High Court
Grant of
Representation

Revenue

Capital
Acquisitions
Tax



Foreword

Both the Courts Service and the Revenue Commissioners are committed to delivering fast and efficient public service. This joint initiative between both organisations is evidence of a new and welcome approach to this commitment. The past two years have seen both the Courts Service Probate Office and the Revenue Commissioners work together to improve the Inland Revenue Affidavit procedure in the administration of a deceased person's estate. The ultimate result of this work will be a streamlined and faster administration process.

I am confident that personal representatives of deceased persons and legal practitioners working in this field will welcome the proposed measures.

On behalf of the Courts Service, I wish to take this opportunity to thank the Revenue authorities for their foresight, motivation and co-operation in this joint project. We look forward to working together into the future to improving our service to the public at large.

Brendan Ryan
CEO Courts Service

Revenue is committed to providing a supportive service that helps all customers to pay the right tax and get their entitlements. Key to this goal are the changes to the administration and collection of Capital Acquisition Tax (CAT). These changes aim to modernise and simplify the CAT process to the benefit of taxpayers, practitioners and Revenue.

By removing many of the current certification and clearances required and by moving to a fixed filing date Revenue aims to simplify and streamline the process and bring it more into line with other self-assessment taxes while also reducing compliance costs and the administrative burden for taxpayers.

Part of this modernisation and simplification of procedures is the enhancement of e-filing for CAT through Revenue's online service (ROS). Revenue is recognised as a leader in using information and communications technologies to deliver fast and efficient public services and ROS is a testament to this.

I would like to acknowledge and thank the Courts Service for its valuable assistance and co-operation on this joint project.

Josephine Feehily,
Chairman

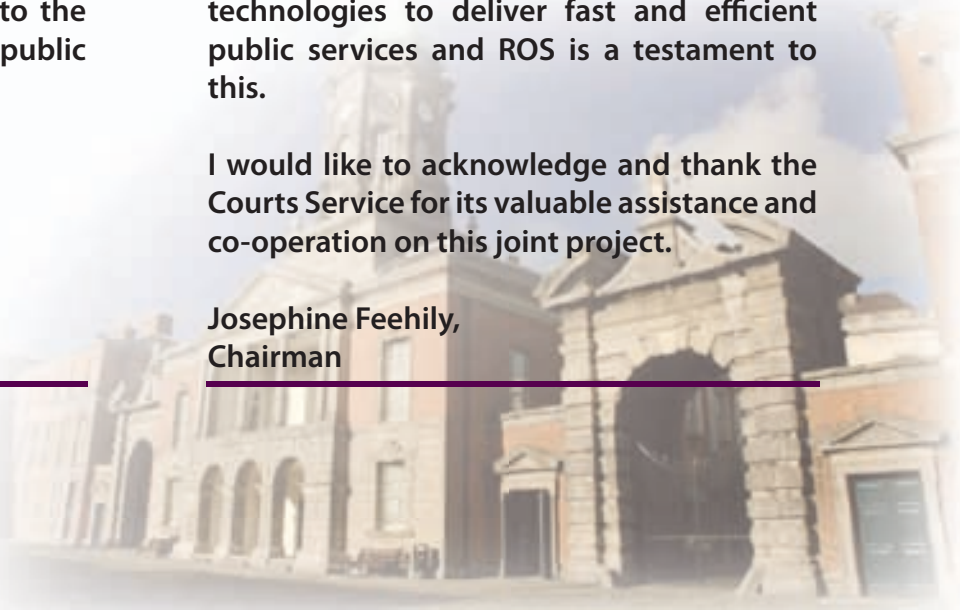


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1. The Courts Service

1.1 Introduction

The filing of an Inland Revenue Affidavit with the Revenue Commissioners in advance of applying to the High Court Probate Office for a Grant of Representation in a deceased person's estate has been a long established practice. As and from mid June 2010, where a deceased person died on or after 5th December 2001, this practice will be replaced by a more efficient and streamlined procedure. Both legal practitioners and personal representatives dealing with the estates of deceased persons are urged to familiarise themselves with the proposed new initiative, the details of which are set out hereunder. This familiarisation will ensure that there are no delays in the administration of the estates for which they have responsibility.

1.2 Preparation of Inland Revenue Affidavit

- 1.2.1 Obtain updated version of Inland Revenue Affidavit from Revenue Commissioners.
- 1.2.2 Complete the Affidavit in duplicate in blue pen. Please note that a photocopy of the Affidavit will not be accepted.
- 1.2.3 All fields in the Affidavit are mandatory and failure to complete same will result in your Affidavit being rejected by the Probate Office/District Probate Registry.
- 1.2.4 Have both Affidavits sworn and signed by the proposed applicant and Solicitor/Commissioner for Oaths/Court Clerk before whom the document is sworn

1.3 Submission of Application for Grant of Representation to the Probate Office/District Probate Registry

- 1.3.1 Submit the said Affidavits directly to the Probate Office together with all other necessary documentation for the Grant of Representation in the deceased's estate.
- 1.3.2 The Probate Office/District Probate Registry will check the Inland Revenue Affidavit in so far as the Probate element of the process is concerned. All tax details will become a matter in due course for the Revenue Commissioners.

1.4 Issue of Grant of Representation

- 1.4.1 When the Grant issues in the estate in question, the Grant of Representation will no longer have a Certificate thereon indicating the position regarding the payment or otherwise of Capital Acquisitions Tax.
- 1.4.2 The Certificate indicating the delivery of an Inland Revenue Affidavit in the estate together with the Gross and Net Value of the estate will remain on the face of the Grant.

1.5 Post Issue of Grant of Representation

- 1.5.1 Once the Grant of Representation issues in the deceased person's estate,
 - (a) one of the said duplicate Inland Revenue Affidavits already furnished to the Probate Office will be forwarded to the Revenue Commissioners by the Probate Office/District Probate Registry.
 - (b) Details regarding the issue of the Grant of Representation and other relevant information as is held in electronic form by the Probate Office/District Probate Registry will be transmitted electronically to the Revenue Commissioners.

The Probate Office will have no further function in this process once the above details have been transmitted to the Revenue Commissioners.

2. Revenue

2.1 Introduction

The Finance Act 2010 has introduced significant changes to the Capital Acquisitions Tax Consolidation Act 2003. The purpose of this guide is to explain the changes as they relate to Capital Acquisitions Tax (CAT) and to probate requirements.

Many of the existing processes around the administration of CAT are out of line with self-assessment principles and involve what are now considered to be excessive certification and clearances having regard to the risks involved and the alternatives available to Revenue for managing those risks. The aim of the changes is to simplify and streamline the administration and collection of CAT. This involves the abolition of most of the current certifications and clearances required as well as changing over to a fixed date in the tax year for filing returns and payment. In addition there will be an increased emphasis on the computerisation of CAT and the strengthening of the on-line filing facilities.

2.2 Changes to Probate Requirements

Currently, where a personal representative applies for a grant of probate or letters of administration to enable him or her administer a deceased person's estate, an Inland Revenue Affidavit must be submitted to Revenue in the first instance for certification that -

- Revenue has, in fact, received the Affidavit, and
- Revenue either does not require a payment on account of inheritance tax at that stage or that an adequate payment on account of inheritance tax has been made.

From mid June 2010, where the deceased person died on or after 5 December 2001, Revenue will no longer provide certification before an Inland Revenue Affidavit is submitted to the Probate Office.

Instead, the following revised procedure will apply:

- (a) An updated version of the Inland Revenue Affidavit will be used for all new applications.
- (b) The Affidavit will be prepared and sworn in duplicate.
- (c) Both Affidavits will be submitted directly to the Probate Office/District Probate Registry. Once Probate has been issued, Revenue will receive all relevant data directly from the Probate Office. There are no changes to the form and procedures in respect of applications where the deceased died prior to 5 December 2001.

Details will only be required for beneficiaries whose current benefit exceeds €20,000 and, as part of the simplification process, information to be provided in respect of prior aggregable benefits is limited to the amounts under each Threshold. (At present, additional information regarding prior benefits must be provided.)

2.3. Changes to Capital Acquisitions Tax

2.3.1 Introduction of a pay and file regime for Gift Tax and Inheritance Tax.

Under current provisions, a tax return (on form IT 38) and payment of the tax must be made within 4 months of the valuation date of a gift or inheritance. In the context of a fully self-assessed tax, fixed deadlines have an advantage over variable due dates in particular where they align with other tax deadlines. Some of the advantages are that there is an increased awareness of liabilities needing to be reviewed at that time and compliance is therefore likely to be greater.

The 2010 Finance Act introduces a fixed pay and file date for CAT of 31 October, to align with the Income Tax pay and file deadline, with some added time being given (as for Income Tax) to payments/returns made via Revenue's On-line Service (ROS). All gifts and inheritances with a valuation date in the 12 month period ending on the previous 31 August will be included in the return to be filed by 31 October. That means where the valuation date arises between 1 January and 31 August, the pay & file deadline would be 31 October in that year; and where the valuation date arises between 1 September and 31 December, the pay & file deadline would be 31 October in the following year.

Examples:

Valuation date 21 February 2011: File IT 38 and pay tax by 31 October 2011

Valuation date 6 November 2011: File IT 38 and pay tax by 31 October 2012

In moving to a fixed pay and file date for the year ending 31 August, the period between the valuation date and the filing/payment date will increase in most cases. At its extreme, the filing period will increase from 4 months to 14 months. For example, where the valuation date is 1 September 2010, tax will not be due until 31 October 2011. However, the period between the valuation date and the filing/payment date in a minority of cases will be less than 4 months (i.e. where the valuation date arises between 2 July and 31 August). Where ROS is used the extended ROS filing date will provide a further period in which to pay and file.

As a service to taxpayers, Revenue will issue an IT38 to individuals who it understands may have a requirement to pay and file a CAT return in a tax year.

The existing paper tax return (Form IT38) is being replaced by a newer, simpler version, which will provide for the filing of a paper return where the beneficiary is not claiming any reliefs, exemptions, etc. other than the small gifts exemption.

Where any other relief, etc. is being claimed, the return must be filed electronically through ROS. The Report of the Commission on Taxation recommended that claims for reliefs, etc. should generally be claimed through an electronic platform. CAT is a complex tax resulting in many calculations and adjustments. As such, much of Revenue's administration of CAT revolves around computational adjustments. By introducing a requirement to claim reliefs through ROS, Revenue will be able to ensure accurate returns through on-line rules, as currently applies in other taxheads. The functionality of ROS ensures that the form is simple and quick to complete as only questions that are pertinent to the return are presented for answers. As information is entered the system progressively customises the return screens that have to be completed, thus minimising the number of screens and options presented.

A major advantage of filing a return through ROS is that the system will calculate the correct CAT due based on the information entered on the electronic return. However, in the case of a paper return, the filers will have to compute the liability themselves and enter the relevant figure on the return. Revenue will automatically check the liability based on the information in the form and where Revenue determines a higher liability, an amended assessment will be made and payment of the additional CAT will be due by the pay and file deadline. Late payment will give rise to an interest charge.

An important element of any fixed pay and file regime is an appropriate sanction for those who do not comply with the pay and file deadline. In the case of Income Tax, Corporation Tax and Capital Gains Tax this takes the form of a surcharge for the late filing of a return. The surcharge is based on a percentage increase in the total tax payable for the year for which the return is late. A similar surcharge provision is being introduced for CAT. This is consistent with the objective of bringing CAT into line with other self-assessment taxes.

The surcharge is based on a percentage increase in the total tax payable for the year for which the return is late, and is subject to a grading of the surcharge by reference to the length of the delay in filing as well as being subject to an overall cap on the level of the surcharge calculated as follows: A 5% surcharge applies, subject to a maximum of €12,695, where the tax return is delivered within two months of the filing date (e.g., for the year of assessment 2010, any date between 1 November 2010 and 31 December 2010 inclusive). A 10% surcharge, up to a maximum of €63,485, will be applied where the tax return is not delivered within two months of the filing date.

2.3.2 *Abolition of the status of CAT as a charge on property that has been the subject of a gift or inheritance in the previous 12 years.*

Prior to the passing of the Act, any tax due in respect of a gift or inheritance remained as a charge on the property, unless Revenue issued a certificate of discharge or (generally) 12 years had passed since the date of the inheritance or gift. The maintenance of a charge on property inherited/gifted, and the consequent need for certificates of discharge, is not consistent with modern, self-assessment tax administration and generates additional processing and compliance costs.

The 2010 Finance Act has abolished CAT as a charge on property received as a gift or an inheritance. This eliminates the need to apply for certificates of discharge. The advantages of this change to both the taxpayer and agent are that it will significantly simplify and speed up the return process. An additional benefit will be a simplification of conveyancing practices as it is currently standard practice in land sales for a purchaser's solicitor to require an unconditional certificate of discharge from a vendor's solicitor.

The abolition of the charge on property came into effect with the passing of the Finance Act 2010 and extends to all applications for certificates of discharge, including those relating to gifts and inheritances taken prior to the passing of the Act, except in cases where Revenue has already instituted proceedings for the recovery of tax on foot of the charge.

2.3.3 *Abolition of secondary accountability.*

Prior to the passing of the Act, CAT legislation extended secondary accountability to a number of other parties (e.g. personal representatives in an inheritance situation or the donor in the case of a gift) where the beneficiary fails to pay the tax due and the person secondarily liable has control over the property passing. This secondary liability gives rise to a number of requests for certificates of personal discharge by those otherwise potentially liable in the event of default by the beneficiary.

Secondary accountability has now been abolished for inheritances and gifts. This will eliminate a lot of processing and compliance costs relating to certificates of personal discharge. The advantage being that this will be a more streamlined system and more in line with other taxes.

In order to deal with legacy cases secondary accountability will also be abolished for all cases from the enactment of the Finance Act 2010.

2.3.4 *Requirement to appoint an Irish-resident "agent" who will be responsible for pay and file procedures where beneficiaries are non-resident.*

One area of concern relates to the payment of CAT by non-resident beneficiaries. To address this situation, an Irish resident personal representative taking out probate or letters of administration will be appointed as an "Agent" of a non-resident beneficiary entitled to a benefit exceeding €20,000. The agent will be responsible for the pay and file requirements of the non-resident beneficiary. In this regard, the agent will be entitled to retain funds adequate to meet the CAT liability from any amounts due to the beneficiary under the control of the agent. The liability of the agent will be restricted to the extent of the funds under his/her control which are available for distribution to the beneficiary.

Where there is no Irish resident personal representative, the personal representatives must appoint a Solicitor holding a practicing certificate in the State as agent prior to seeking probate or letters of administration.

2.3.5 *A requirement to e-file where certain Reliefs are being claimed.*

The 2010 Finance Act introduces mandatory e-filing of the IT38 where reliefs or exemptions (other than the exemption for small gifts) are being claimed by a beneficiary of a gift or an inheritance. E- Filing is the electronic filing of returns through Revenue's online service (ROS).

The Report of the Commission on Taxation recommended that claims for reliefs, etc. should generally be claimed through an electronic platform. CAT is a complex tax resulting in many calculations and adjustments. As such, much of Revenue's administration of CAT revolves around computational adjustments. By introducing a requirement to claim reliefs through ROS, Revenue will be able to ensure accurate returns through on-line rules, as currently applies in other taxheads. Revenue will also be able to gain valuable information, which can be used in evaluating the cost and effectiveness of such reliefs and providing more detailed analysis to the Department of Finance, as part of the overall budgetary process.

ROS will allow for the filing of a CAT return at any stage during the year and will compute the correct liability based on the information in the return. This will be of benefit to practitioners who will be able to advise their clients of the correct tax due at any time of the year.

Most tax agents and many solicitors, with the introduction of e-stamping, will already be registered for ROS but for details of how to register and the benefits of e-filing please see sections 2.4 and 2.5 of this guide.

2.3.6 *The inclusion of reminder questions in Forms 11/12 and CG50.*

Provision is being made to include an enabling provision to allow for "reminder" questions in forms 11/12 and CG50. In a self-assessment environment, these questions will be designed to act as prompts for the filing of CAT returns in relevant cases, especially with the same pay and file dates applying to these taxes.

The proposals do not provide for forms IT38 and forms 11/12 to be incorporated into a single return and Revenue expect that CAT returns will, in most cases, continue to be filed by practitioners who are involved in the administration of estates, etc.

2.3.7. *Future Developments.*

The Bill also contains an enabling provision which will allow both Revenue and the Courts Service put in place a common platform for the electronic filing of the Inland Revenue Affidavit. However, there are a number of issues to be resolved before this can come into operation.

Revenue is committed to working with practitioners through TALC (Taxation Advisory Liaison Council) which comprises of representatives from Revenue and the taxation, accountancy and legal sectors.

2.4 Registering for ROS

ROS registration is a simple process but, because of the strict security requirements, the process includes postal correspondence and may take a week or two to complete. Therefore, you are advised to start the process in good time before you plan to use the system.

There are three steps to registering for ROS that culminate in your receipt of a ROS Digital Certificate and access to the ROS system.

Step One – Applying for a ROS Access Number (RAN)

To begin this process you will need to have your firm’s tax registration number (and the tax type to which the number refers i.e. VAT number, Income Tax number, etc) to hand. Once you have completed the application on the ROS webpage, the system will generate a RAN, which you will receive through the post in the following days.

Step Two - Applying for a ROS Digital Certificate

Once you have received your RAN in the post, you can proceed to apply for a ROS Digital Certificate on the system. This will result in the system generating a ROS password, which you will receive through the post in the following days.

Step Three - Downloading the ROS Digital Certificate

The final step allows you to use the password to retrieve and download your ROS Digital Certificate to your computer. You are now registered in ROS and ready to file and pay on line.

For detailed guidance on the ROS registration process please go to <http://www.revenue.ie/en/online/ros/index.html>. To commence the process of registering for ROS please go to <http://www.ros.ie/PublisherServlet/info/setupnewcust> to complete the three-step process.

Figure 1:

Login screen (excerpt) for Revenue’s on-line Service (ROS)

Once you have registered with Revenue as a ROS customer you can log into the ROS system and access CAT



2.5 Benefits of E-Filing

Improved Customer Service

Revenue can provide a more efficient, timely and cost effective service to our customers. Access to your own Revenue account from your own PC with 24 hour, 365 day access to ROS. There are calculation facilities to assist customers with determining their tax liability as well as built-in electronic acknowledgments of returns and payments.

Faster Processing Time for Returns and Payments

By eliminating mailing, handling, and keying in of returns, there will be faster processing of returns and payments. This coupled with the abolition of certificates of discharge will significantly reduce processing times and compliance costs.

Quicker completion of Returns

In ROS the system progressively customises the return as the filer enters data and selects options. Obviously no such option is available in a paper return. With the electronic return the filer is alerted of certain errors and must correct the return before being able to proceed and the tax due will be calculated automatically. This quicker and easier completion of returns will reduce compliance costs.

Extended Pay and File Date

An advantage of e-filing over paper returns will be an extended pay and file date similar to Income Tax. For example 2008 Income Tax returns filed online had an extended pay and file date of 16th of November 2009 instead of the 31st of October.

Working Off-line

The ROS off-line facility allows the IT38 return to be downloaded onto a computer or office computer network for local use off-line. This means that you can use the off-line system to begin to 'build' the return in advance of filing. In addition, the off-line facility allows you to check the returns and payments on-line with your firm's approval process and make any necessary corrections before uploading the approved return and transmitting it on-line to Revenue, via ROS.

Help Text

Each IT38 screen will contain a link to a comprehensive on-line help text facility that sets out clearly the requirements for completing successfully every field on the screen. In addition to providing assistance in completing the return on line, the help text provides useful background information on CAT rules, regulations and practices.

Access and Permission Rights for Practice Staff

ROS functionality is very flexible and matches most office practices. Within your firm, different people may be involved in different stages of filing a return. When you apply for and retrieve the ROS digital certificate, you become the ROS administrator and you can assign different ROS permissions to anybody working in the firm. You can do this by assigning a ROS subcert to other people within the firm. As the ROS Administrator for your firm, you can permit and enable ROS subcert holders to carry out listed tasks ("file return", "view only", etc). This means that each person to whom you assign a ROS subcert can perform e-filing tasks from his/her own computer.

Payments

As a ROS customer, you will be able to pay the tax due through Revenue's on-line service. This is a simple and effective way of ensuring that the appropriate tax is paid on time and assigned to the correct customer.

Records

The material in your ROS Inbox is a permanent record that can be archived by you according to your future needs.

Validation of Key Details

Usefully, the electronic system will validate certain information automatically, such as the tax reference numbers entered for each party, before the return is filed. It will show an error message where invalid data has been entered allowing you to make the necessary corrections before completing and filing the return.



3. General Information

3.1 Frequently Asked Questions

Q1: *What are the changes to CAT and the administration of Probate being introduced by the 2010 Finance Act?*

A: The 2010 Finance Act is introducing significant changes to the Capital Acquisitions Tax Consolidation Act 2003, as amended, to provide for –

- Removal of the requirement for Revenue certification of the Inland Revenue Affidavit (CA24) before issue of Probate by the Courts Service (Probate Office).
- Introduction of a pay and file regime for Gift Tax and Inheritance Tax.
- The introduction of a surcharge for the late filing of a CAT return.
- Abolition of the status of CAT as a charge on property that has been the subject of a gift or inheritance in the previous 12 years.
- Abolition of secondary accountability. Forms CA11, CA44, IT10, will no longer be issued by Revenue.
- Requirement to appoint an Irish-resident “agent” who will be responsible for pay and file procedures where beneficiaries are non-resident.
- A requirement to electronically file where reliefs are being claimed.

Q2: *When are these changes coming into effect?*

A: The abolition of the status of CAT as a charge on property, the abolition of secondary accountability, and a revised clearance threshold of €50,000 for joint accounts, all came into effect from the date of the passing of the Act. All other changes will come into effect on a date to be decided by the Revenue Commissioners. It is envisioned that this will be mid June 2010.

Q3: *The Inland Revenue Affidavit will continue to be sent to Revenue for certification until mid June. Where the beneficiary is not resident, the personal representative or where the personal representative is also non-resident, the solicitor, is assessable and chargeable where the beneficiary does not file a tax return and make a payment. When does this provision take effect from?*

A: In the situation where the personal representative is resident, the provision has effect from the enactment of the Finance Bill 2010. Where the personal representative is also non-resident and a solicitor is appointed under section 48 (10), the provision has effect from a date to be specified by the Revenue Commissioners expected to be mid June 2010.

PROBATE

Q4: *What are the changes to the administration of Probate being introduced by the 2010 Finance Act?*

A: From mid June you will no longer need to present an Inland Revenue Affidavit to the Revenue Commissioners for certification prior to your application for Probate to the Courts Service. Instead the Inland Revenue Affidavit will be submitted in duplicate directly to the Probate Office together with all other necessary documentation for the Grant of Representation in the deceased estate.

Q5: *If a corrective affidavit is needed where is it filed?*

A: The corrective affidavit (form CA26) should be sent in duplicate directly to the Probate Office. Revenue will be provided with a copy by the Probate Office.

Probate

Q6: *What is the procedure for De Bonis Non Grants?*

A: Form A3C (change to personal representative) should also be sent in duplicate directly to the Probate Office together with all other appropriate documentation.

Q7: *What is the position with personal applications for Probate?*

A: The majority of persons instruct a Solicitor to extract Probate. In some instances it is possible to apply in person through the Personal Applicants Section of the Probate Office or one of the District Probate Registries for Probate. Under this new legislation, where there is a non-resident beneficiary of an estate with a potential for tax liability and all of the proposed legal personal representatives of an estate are also non-resident, a Solicitor must be appointed to act in connection with the administration of the estate.

Q8: *What will be the status of solicitors already acting in estates with non-resident beneficiaries and personal representatives? Will Revenue be treating them as agents under the new rules?*

A: The new provisions apply in respect of applications for probate following the enactment of the Finance Bill 2010. Probates issued prior to this date are unaffected.

CERTIFICATES OF DISCHARGE

Q9: *Will any clearance certificates be issued once the Finance Bill 2010 has been enacted?*

A: In general, clearance certificates will not be issued by Revenue once the Finance Bill 2010 is enacted. An exception applies in the case of applications to the Property Registration Authority for adverse possession.

Q10: *Can applications still be made for Letters of Clearance Form IT8 and Form IT10?*

A: Form IT8 can still be applied for where the amount lodged or deposited in joint names exceeds €50,000. Form IT10 will no longer be issued.

Q11: *I have a number of clients who are in the process of purchasing a property and the purchasers are seeking a certificate of discharge. The requirement for the certificate of discharge is included in the contract. What is the position?*

A: Once the Finance Bill 2010 is enacted, there is no need for a certificate of discharge and Revenue will no longer issue certificates of discharge. The inclusion of such a requirement in the contract is superfluous as it is no longer required or available.

REVENUE ON-LINE SERVICES (ROS)

Q12: *I wish to claim a relief as part of making my gift or inheritance tax return. How do I meet the legal requirement to electronically file my return?*

A: You can electronically file by registering with Revenue's Online Service (ROS).

Q13: What is Revenue On-line Services (ROS)?

A: ROS is an internet based system that enables Revenue customers and their agents to conduct their business electronically with Revenue at a time and place of their choosing. The main features of ROS include facilities to:

- File returns and make payments.
- Obtain online details of personal/clients Revenue accounts.
- Calculate tax liability.
- Claim repayments.

Q14: How do I register for ROS?

A: ROS has a simple three-step registration process, at the end of which a Digital Certificate will be issued. The Digital Certificate enables the customer to access ROS and utilise its full range of services. To register select the Revenue Online Service link from the Revenue homepage at <http://www.revenue.ie/>. From the ROS homepage click "How to become a ROS customer" and simply follow the instructions. The three steps to becoming a ROS customer are:

- **Step 1:** Apply for a RAN (ROS Access Number) which is posted to you.
- **Step 2:** Input the RAN and await the receipt of a system password which is also posted to you.
- **Step 3:** Enter the password to retrieve your digital certificate.

Q15: Is there any restriction on who can register as an agent for the purposes of filing a CAT return?

A: There is no restriction. Anyone can register to use ROS.

Q16: Who should I contact with any problems encountered when filing a ROS Return?

A. The ROS Helpdesk can be contacted at lo-call 1890 201 106.

ELECTRONIC FILING

Q17: I am a solicitor or individual taxpayer and wish to file a gift or inheritance tax return (IT38) on line. How do I do this?

A: Having registered with Revenue as a ROS customer (see question 14) you file the gift or inheritance tax return (IT38) by logging onto your ROS account and selecting CAT from the tax heads listed. ROS will bring up the return screens for CAT. You complete the return by selecting from drop-down menus and entering the relevant information. The information you enter will customise the return as you progress so that you are only presented with the relevant sections. The ROS system will calculate the CAT liability based on the information entered. You can use an off-line version of the IT38 by downloading a return to your own computer (or office network), which you can complete off-line. Once satisfied with the return, you can go on-line in ROS to upload and file the completed return and make a payment to Revenue.

Q18: I am a solicitor or individual taxpayer, how do I pay on-line in ROS?

A: Payment through ROS is straightforward. Simply sign-in and select the relevant links and the system will guide you through the process. You can make the payment by laser or by RDI. When you sign up for ROS you can set up a direct debit with ROS (known as ROS Debit Instruction (RDI)) where you can nominate a bank account from which ROS will automatically debit the on-line payments you have authorised.

Q19: I am an agent, how do I file a return on-line?

A: You cannot complete the return on-line but instead should use the off-line version of the IT 38 to download a return to your own computer (or office network), which you can complete. Once satisfied with the return, you can file the return by logging onto your ROS account to upload and file the completed return and make a payment to Revenue.

Q20: I am an agent, how do I pay on-line in ROS?

A: Payment through ROS is straightforward. Simply sign-in and select the relevant links and the system will guide you through the process. You can make the payment by laser card only.

Q21: I am a taxpayer, can I file my own return directly with Revenue?

A: Yes. A taxpayer can file his or her own tax return. However, where the taxpayer wishes to file electronically, or has a requirement to file electronically, through ROS, he or she will require to have a digital certificate. However, Revenue is aware that, in most cases, the practitioner acting for the estate generally files the tax returns for the beneficiaries and does not expect to see a substantial change in this regard.

Q22: Can I file a return without payment?

A: Yes. However it is important to make a payment of the tax by the due date to avoid interest charges so we recommend filing of the return and payment of the tax at the same time as an efficient and sure way of meeting both obligations to file and pay the tax by the due date. Payment through ROS also ensures that the payment is assigned to the correct case and period. If payment is being made after the return has been filed you can pay separately by going back into ROS or through the post by cheque.

Q23: When I push the button to pay and submit, is there a record of all the fields I've completed?

A: Yes. A copy of all the information that you have filed is available through your ROS in-box after the return is filed.

Q24: Will a notice of assessment issue automatically like in Income Tax?

A: CAT is a fully assessed tax. By completing your return on line, you self-assess and a notice of assessment will not issue. The tax is automatically calculated for you based on the information you provide. On receipt of the ROS return, Revenue will issue an acknowledgement. If the return is filed late, a surcharge will be due and an amended assessment will be made by Revenue to include the surcharge. In such cases, a notice of amended assessment will issue from Revenue. Where a paper return (IT38) is filed and if Revenue is satisfied that, based on the data in the return, the tax is correctly computed an acknowledgement will issue. However, if Revenue disagrees with the taxpayer's self-assessment or if a surcharge arises, Revenue will make an amended assessment and a notice of amended assessment will issue.

Q25: *I am not claiming any reliefs. Can I file my return electronically rather than by paper copy if I wish?*

A: E-filing can be used to file all returns regardless of whether a relief has been claimed. This is the preferred method for filing returns as it eliminates computational errors and ensures that all relevant data is returned. However you can if you wish still make a paper return.

Q26 *I have received an IT38 from Revenue but do not have a requirement to file this tax year. What do I do?*

A: As a service to customers, Revenue will issue a notice incorporating a Form IT38 to individuals who it understands may have a requirement to pay and file a CAT return. Given the fact that that the valuation date in relation to inheritances is not always easily determinable, Revenue accepts that there may be no liability for the year to which the IT38 relates.

Where an individual has received such a form, the individual or a practitioner acting for him/her can advise Revenue that a return is not due. This can be done by contacting your local tax office or by ticking the relevant box on the paper form, and submitting it to Revenue. There is no need to sign the form and the submission of the notification will not be regarded as a submission of a return.

The requirement to pay and file a CAT return for a year in which there is a valuation date is unaffected by this procedure.

Q27: *What should I do where I have received a gift or an inheritance, and have not received a Form IT38 to complete?*

A: You should file a return as required under Sec.46 CATCA 2003.

Q28: *What happens if I file late?*

A: If a return is filed late, interest and a surcharge will apply.

Q29. *What is the surcharge?*

A: The surcharge is based on a percentage increase in the total tax payable for the year for which the return is late, and is subject to a grading by reference to the length of the delay in filing as well as being subject to an overall cap, calculated as follows: A 5% surcharge applies, subject to a maximum of €12,695, where the tax return is delivered within two months of the filing date (e.g., for the year of assessment 2010, any date between 1 November 2010 and 31 December 2010 inclusive). While a 10% surcharge, up to a maximum of €63,485, will be applied where the tax return is not delivered within two months of the filing date.

General

Q30: *If secondary liability and the 12 year charge only remain for cases where Revenue have issued proceedings (after the new Act) how will practitioners be able to confirm if proceedings were issued? Are there any cases in practice where proceedings have issued?*

A: It should be clear to practitioners whether or not proceedings have been commenced. A letter from Revenue indicating that proceedings are being considered is not an indication that proceedings have commenced. Revenue is not aware of any active cases where proceedings were issued.

Q31: *As an agent appointed under Section 48(10), what is the position where a beneficiary provides incorrect information regarding the receipt of prior gifts and inheritances and additional tax is now due?*

A: Revenue will not pursue the agent for liability in this situation as a result of the beneficiary providing incorrect information to the agent, provided the agent has made reasonable enquiries on the matter and has acted in good faith.

Q32: *As an agent appointed under Section 48(10), what is the position where the liability of a beneficiary is affected by the value of non-Irish assets which were not disclosed by the beneficiary to the agent and over which the agent did not have any control?*

A: Where a liability to CAT arises in respect of assets that were not under the control of an agent and the assets were not reported to the agent following reasonable enquiries by the agent acting in good faith, Revenue will only pursue the agent directly for the outstanding tax to the extent of the assets remaining under the control of the agent.

Q33. *What is a PPS number and where do I get it?*

A. It is your personal number for tax and welfare purposes and is issued by the Department of Social and Family Affairs. Please note that spouses' PPS numbers with a 'W' suffix should not be used. Where this is the case, a new number should be sought from the Department of Social and Family Affairs.

Please note that the FAQ section can be found on www.Revenue.ie <<http://www.Revenue.ie>> and will be updated regularly.

Information and Support

Courts Services

Telephone: Probate Office/District Probate Registries

Probate Office:

Phoenix House, Smithfield, Dublin 7: 01 8886174/176

District Probate Registries (Circuit Court Offices):

Cavan: 049 4331530

Castlebar, Co Mayo: 094 9043802

Clonmel, Co Tipperary: 052 6129183

Cork: 021 4275321

Dundalk, Co Louth: 042 9392300

Galway: 091 562340

Kilkenny: 056 7722073

Letterkenny, Co Donegal: 074 9128711

Limerick: 061 414655

Mullingar, Co Westmeath: 044 9348315

Sligo: 071 9142089

Tralee, Co Kerry: 066 7121998/066 7122349

Waterford: 051 874144

Wexford: 053 9122329

Courts Service Website

www.courts.ie

Revenue

ROS Technical Assistance

LoCall: 1890 20 11 06 for assistance from the ROS Technical Helpdesk. This helpdesk will assist with any technical issues concerning ROS. You can also e-mail ROS at roshelp@revenue.ie

Revenue Assistance

For enquiries relating to Capital Acquisitions Tax, including gifts or inheritances, LoCall: 1890 20 11 04

Revenue Website

Information relating to CAT can be found on the Revenue website at: www.revenue.ie