Capital Acquisitions Tax

Guide to the CAT Treatment of Receipts by Children from their Parents for their Support, Maintenance or Education.

[Section 82 Capital Acquisitions Tax Consolidation Act 2003 as amended by Section 81, Finance Act 2014]

1. Background

1.1 Lifetime Parent to Child Tax Free Threshold.

Capital Acquisitions Tax (CAT) is a tax that imposes a charge on individuals who receive gifts and inheritances where the value of the gifts and inheritances exceed that individual's lifetime tax-free threshold. As and from 2nd October 2024, a child is entitled to a life time tax-free threshold of €400,000 in respect of gifts and inheritances taken from his or her parents. Where the aggregate of the gifts and inheritances received by a child from a parent exceeds €400,000, only the excess is charged to tax.

1.2 Small Gift Exemption.

In addition to this €400,000 tax-free threshold, the first €3,000 of gifts to a child in any year is exempt from CAT under the annual small gifts exemption. This means that each parent can give a gift to a value of €3,000 to a child (or to anyone else) each calendar year without any CAT charge arising. Two parents can make gifts to a child to the value of €6,000 in any year free of CAT. Indeed, two parents could, if they wished, gift €12,000 in total each year to each son or daughter and their respective partner (e.g. fiancée, fiancé, daughter-in-law, son-in-law) free of CAT.

There is no obligation on a beneficiary of a gift to spend it in the year it is received. Gifts can be accumulated by the child after receipt to meet future expenditure e.g. to meet a deposit on a house.

Gifts which qualify for the small gifts exemption do not reduce the parent to child tax–free threshold of €400,000 – gifts in excess of the small gifts exemption reduce the threshold after taking the exemption into account.

Example 1 – Lifetime Parent to Child Tax Free Threshold

	Gift	Small Gift Exemption	Tax Free Threshold [400,000]	CAT Charge
Year 1 Parent pays for holiday for child at a cost of €5,000	€5,000	(less 3,000 exempt)	Tax Free Threshold reduced by €2,000 to €398,000	NIL – in Year 1
Year 2 Parent gives child a gift of €20,000 to buy a car	€20,000	(less 3,000 exempt)	Tax Free Threshold reduced by €17,000 to €381,000	NIL – in Year 2
Year 3 Parent gives child a gift of €100,000 as a deposit on a house	€100,000	(less 3,000 exempt)	Tax Free Threshold reduced by €97,000 to €284,000	NIL – in Year 3
Year 4 Parent gives child a gift of of €30,000 to replace a car	€30,000	(less 3,000 exempt)	Tax Free Threshold reduced by €27,000 to €257,000	NIL – in Year 4
Year 5 Parent makes a gift of an apartment valued at €300,000 to child	€300,000	(less 3,000 exempt)	Tax Free Threshold reduced to NIL	**€13,200* in Year 5** **(i.e. €40,000 @33%)**

***CAT Charge on the Total Gifts of €455,000 in the example above is calculated as follows:**

Total Gifts	€455,000
Less Small Gift Exemption €3000 x 5 years	€ 15,000
Total Taxable Gifts	€440,000
Less Tax Free Threshold	€400,000
CAT Chargeable on	€40,000
CAT Charge €40,000 @33% =	**€13,200**

Example 2. Small Gifts Exemption

Both parents gift €3,000 to their child each year for 10 years, which the child saves. This amounts to €60,000 after 10 years. This amount can be used as the child wishes and is not subject to CAT – as the annual €3,000 small gifts exemption from each parent for each of the 10 years is not exceeded.

In addition, the €400,000 lifetime tax-free threshold is preserved intact for use against larger gifts or inheritances.

2. Exemption in respect of payments for support, maintenance and education (position prior to Finance Act 2014)

2.1 Section 82(2) CATCA exempts from CAT money or money's worth given by an individual ("the disponer") during his or her lifetime for the **support, maintenance or education** of his or her children, his or her civil partner's children or a person in relation to whom he or she stands *in loco parentis*, as well as payments for the **support or maintenance** of a dependent relative under section 466, TCA 1997.

2.2 To qualify for the exemption, the provision of the support, maintenance or education must be –

(i) Such as would be part of the normal expenditure of a person in the circumstances of the disponer, and

(ii) Reasonable, having regard to the financial circumstances of the disponer.

2.3 Revenue's view is that "normal" in this context refers to the nature of the expenditure rather than the amount and that it means expenditure that might typically be incurred by a person in the circumstances of the disponer.

For example, payment of fees and accommodation costs for a dependent child attending college would be normal and would be exempt from gift tax – albeit not all parents would incur such costs. On the other hand, the purchase of a house for a child would not be considered part of the "normal" expenditure of a disponer, regardless of the financial means of the disponer and would not be exempt from gift tax.

2.4 "Reasonable" has to be judged by reference to the financial circumstances of the disponer. This requirement prevents a disponer from, for example, making payments that are disproportionate when viewed in the light of the disponer's means. However, it does not, of itself, set a general ceiling on the value of what can be provided by way of maintenance or support.

2.5 Revenue's long held interpretation of the exemption provided by Section 82(2) CATCA 2003 is that it does not cover <u>all</u> payments by a parent to a child notwithstanding that such payments may meet the tests of "normal" and "reasonable" outlined in the foregoing paragraphs. The exemption only applies to the provision of **support, maintenance or education**. This implies at least some level of financial dependence on the part of the child. Revenue does not accept that gifts to a child who is financially independent can come within the terms of the exemption. Neither does it accept that gifts of a capital nature to a child are exempt from gift tax under this section.

3. Finance Act 2014 changes to Section 82 CATCA 2003.

3.1 Section 81 Finance Act 2014 amends Section 82(2) CATCA 2003 to confine the exemption to the provision, in the lifetime of the disponer, of support, maintenance or education to

- a minor child of the disponer or of the civil partner of the disponer or,
- a child of the disponer, or of the civil partner of the disponer, who is more than 18 years of age but not more than 25 years of age who is receiving full-time education or instruction at any university, college, school or other educational establishment, or
- a child of the disponer or of the civil partner of the disponer who, regardless of age, is permanently incapacitated by reason of physical or mental infirmity from maintaining himself or herself.

3.2 Section 81 Finance Act 2014 also amends the exemption in Section 82(4) CATCA 2003 which previously applied to 'normal' and 'reasonable' payments for support, maintenance, or education to orphaned **minor** children. This exemption is now available to children not more than 25 years of age who are in full-time education and to children of any age who are permanently incapacitated by reason of physical or mental infirmity from maintaining themselves.

3.3 For the purposes of the amended Section 82(2) CATCA 2003, receiving full-time education or instruction includes undergoing training for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to such training for a period of not less than 2 years.

4. Gifts within the scope of gift tax

4.1 Gifts within the scope of gift tax include gifts of money, assets with a resale value and the use of assets free of charge or for a charge that is less than what could be obtained by the disponer on the open market.

4.2 **Examples of Non-Exempt Gifts / Payments / Benefits**

House Purchase
The purchase of a house by a parent for a child would not be considered part of the "normal" expenditure of a disponer, regardless of the financial means of the disponer and would not be exempt under Section 82 CATCA 2003 or any other provision.

Free Use of House
Parent buys a house for €1 million and allows his 30 year old daughter to have the free use of the house indefinitely. The annual rental value of the house is €36,000. The free use of the house is a gift equal to the annual rental value each year (less the annual small gift exemption of €3,000). If two or more of the parent's children have the free use of the house, the value of the gift is shared.

If the child ultimately inherited the house, that inheritance could be eligible for exemption from CAT under the principal private residence exemption in Section 86 CATCA 2003 once the conditions governing the relief were satisfied.

Gift of House Deposit
A Gift to a child of a deposit for a house in excess of the annual small gifts exemption of €3,000 is subject to CAT.

Gifts of Money
Gifts of money in excess of the annual small gifts exemption of €3,000 are subject to CAT.

5 Examples of Gifts / Payments / Benefits that are Exempt

The following are examples of gifts / payments / benefits that are exempt from CAT:

Occupation of Family Home by Child
The non-exclusive occupation of the family home by a child (including where relevant the child's spouse / partner) family member. Revenue's view is that this does not give rise to a gift by the owner of the property to the family member. Thus, in line with Revenue's long standing approach, there is no question of trying to attribute a value to "bed and board" provided by the owner of the house to a child (including where relevant that child's spouse / partner) of any age.

Free Use of House by Child attending University
The provision of the use of a house owned by a parent rent-free, to a child not more that 25 years of age who is attending university, to help support and maintain the child while in university, is a normal and reasonable provision and is, accordingly, exempt from tax under Section 82 CATCA 2003.

Cost of Family Functions Paid for by Parent
The costs of a family function such as a wedding paid for by a parent. Revenue takes the view that this is the expense of the parent rather than a gift to the child. Therefore, there are no gift tax implications. This extends not just to the cost of catering for guests but also to all of the costs associated with the occasion.
However, a gift such as a car, a house or a paid holiday is still a gift for gift tax purposes, notwithstanding the fact that it may be associated with a family occasion such as a wedding. To the extent that any such gifts do not exceed the €3,000 small gift exemption in any year, they are not subject to CAT.

Payments to Cover Child's Normal Costs Associated with Attending College
The following payments are not subject to CAT under Section 82 CATCA 2003:

1. Provision of a weekly / monthly sum of money to a child, not more than 25 years of age, attending college in order to cover costs such as rent, food, clothing, purchase of educational material and pocket money,
2. Payment of such a child's tuition fees, and
3. Payment of such a child's transport costs to university or college.

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