

Capital Acquisitions Tax Consolidation Act 2003

Sections 5 and 10: General right of residence

This document should be read in conjunction with sections 5, 10, 28 and 37 of, and Schedule 1 to, the Capital Acquisitions Tax Consolidation Act (CATCA) 2003.

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1 Introduction

A gift or inheritance may comprise a right of residence or a right of residence and support/maintenance. The right of residence may be in the form of an exclusive right to occupy a dwelling or a general right to occupy a dwelling under a shared occupancy arrangement. The purpose of this manual is to explain the Capital Acquisitions Tax (CAT) treatment of a general right of residence.

For information on the CAT treatment of an exclusive right of residence please see CAT Manual Section 28: Exclusive right of residence.

2 General right of residence

Where a person takes a gift or inheritance of a dwelling that is subject to a general, non-exclusive right of another person to reside in the dwelling (which may be accompanied by a right of support/maintenance), both the beneficiary of the right and the beneficiary of the dwelling that is subject to the right receive benefits. For CAT purposes, the values of these benefits are calculated by reference to the “appropriate part” of the market value of the dwelling.

2.1 The “appropriate part”

The “appropriate part”, often referred to as the “slice”, is calculated using the following formula (sections 5(5) (gift) or 10(2) (inheritance) CATCA 2003):

$$\text{Entire property} \quad \times \quad \frac{\text{Gross annual value of the benefit}}{\text{Gross annual value of entire property}}$$

In the context of a right of residence, the formula can be adjusted to read as follows:

$$\text{Market value of property} \quad \times \quad \frac{\text{Annual value of right of residence}}{\text{Annual letting value of property}}$$

The annual value of a right of residence is to be calculated by reference to the specific facts and circumstances of each case. Given the potential difficulties inherent in obtaining such a calculation in practice. Revenue will accept that the appropriate part is equal to **one-tenth** of the market value of the dwelling-house where there is a right of residence and **one-fifth** where there is a right of residence and support/maintenance.

Example

In his will, Michael leaves his house to his sister Caroline with a right of residence for their mother Maura for her life. Maura is aged 75 at date of death of Michael. Using figures estimated by an independent valuer, the appropriate part is calculated as follows:

The market value of the property is estimated at €300,000, the annual value of the right of residence is estimated at €3,500 and the annual letting value of the property is estimated at €25,000. Applying the formula:

$$€300,000 \times \frac{€3,500}{€25,000}$$

$$€42,000$$

Appropriate part = €42,000.

As an alternative to using the formula, the appropriate part can be calculated by reference to one-tenth of the market value of the property, being €30,000.

2.2 Beneficiary of right to reside in dwelling

The third-party beneficiary of the right of residence receives a limited interest in the appropriate part, the value of which is calculated by reducing the appropriate part in accordance with the rules and tables in Schedule 1 CATCA 2003. Detailed guidance on the application of these rules is set out in CAT Manual Sch. 1: Valuation of Limited interests - Parts 1 and 2.

As noted in [2.1](#), Revenue accepts that the appropriate part can be one-tenth (or one-fifth) of the market value of the property.

Example (continued)

Maura takes a 'slice' of the property with a market value of €42,000. Maura is aged 75 and the appropriate factor in Table A of Schedule 1 for a female aged 75 is 0.3743. Maura's taxable value for CAT is €42,000 x .3743 = €15,720.60.

As an alternative to using the formula, Maura's 'slice' can be calculated by reference to one-tenth of the market value of the property, which in this scenario gives a lower value of €30,000. Using this method Maura's taxable value for CAT would be €30,000 x .3743 = €11,229.

2.3 Beneficiary of dwelling that is subject to third-party right of residence

The beneficiary who takes the absolute interest in the property that is subject to the right of a third party to reside in the property receives a benefit, the value of which for CAT purposes is calculated by reducing the market value of the dwelling by the appropriate part (section 28(8) and (9) CATCA 2003).

As noted in [2.1](#), Revenue accepts that the appropriate part can be one tenth (or one-fifth) of the market value of the property.

When the third-party right of residence ceases (e.g., on the death of the third-party beneficiary), the beneficiary of the absolute interest in the property takes a further benefit from the original disponer, the value of which is the appropriate part of the market value on that date (section 37 CATCA 2003). Note that if the method used for calculating the deduction was to take one-tenth (or one-fifth) of the market value of the dwelling, the same method must be used in valuing the cesser of those rights, i.e., one-tenth (or one-fifth) of the market value of the dwelling at the date the right comes to an end.

Example (continued)

Caroline takes a benefit of a house on which a claim for a right of residence arises.

Caroline's taxable benefit is:

$$€300,000 - €42,000 = €258,000$$

As an alternative, Caroline may instead deduct one-tenth of the market value of the house, being €30,000, leaving a taxable benefit of €270,000.

On Maura's death Caroline's interest in the house is enlarged and she is deemed to take a further inheritance from Michael. This further inheritance is based on the appropriate part of the market value of the house at date of death of Maura. On that date, the market value of the property is estimated at €400,000, the annual value of the right of residence is estimated at €4,000 and the annual letting value of the property is estimated at €30,000. Applying the formula:

$$€400,000 \times \frac{€4,000}{€30,000}$$

$$€53,333$$

Appropriate part = €53,333

If the method used for calculating the deduction was to take one-tenth of the market value of the dwelling, one-tenth of the market value of the dwelling at the date the right comes to an end should be used, being €40,000.

In computing Caroline's liability on this benefit, it must be aggregated with her prior inheritance of €258,000 (or €270,000 if the one-tenth deduction was used) from Michael.