Capital Acquisitions Tax Consolidation Act 2003

Part 3: Chapter 1 Inheritance Tax – General

This document should be read in conjunction with Chapter 1 of Part 3 of the Capital Acquisitions Tax Consolidation Act (CATCA) 2003.

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1 Introduction

Chapter 1 of Part 3 CATCA 2003, comprising sections 9 to 13, contains provisions dealing with mainstream Inheritance Tax. This document contains some general guidance on the provisions of Chapter 1.

2 Disclaimers of benefits

Section 12 CATCA 2003 deals with the effect and consequences of disclaimers of benefits.

The section only applies where the person who disclaims a benefit does not name another person who is to benefit. Where there is a pure disclaimer the general rules of law (Succession Act 1965) establish who is to benefit.

2.1 Disclaimers - 10 points to remember

1. A person who disclaims a benefit no longer has a liability to CAT in respect of that disclaimed benefit.
2. A disclaimer is not of itself a disposition for CAT purposes.
3. A person can disclaim for consideration. Any consideration is a benefit moving from the original disponer to the person disclaiming (i.e. a substituted gift or inheritance).
4. A disclaimer in favour of a named person is treated as an acquisition and a subsequent disposal and there are, therefore, two separate charges to CAT.
5. A disclaimed legacy falls into the residue of an estate.
6. If a residuary legatee disclaims, the residue is distributed as if there were an intestacy in respect of the residue.
7. A share of the residue may be disclaimed. That share is then distributed as on intestacy. A person who therefore inherits a half-share of the residue can disclaim that half-share.
8. A person cannot partially disclaim the residue or partially disclaim a share of the residue.
9. A person may, however, disclaim one of several legacies, either pecuniary or specific.
10. If a life interest or other limited interest is disclaimed the remainder interest falls in immediately.

2.2 The State as ultimate intestate successor

Where, in default of any person taking the estate of a disponer who dies intestate, the State takes the estate as ultimate intestate successor, a person in whose favour the State's rights are waived is regarded as having taken an inheritance directly from the intestate disponer and not as having taken a gift from the State.

2.3 Examples

Example 1

John dies testate. He leaves a pecuniary legacy of €60,000 to his brother Michael and the residue of his estate to his daughter Mary. Michael, who is financially well off, decides to disclaim the legacy to him of €60,000. The legacy falls into the residue of the estate and is inherited by Mary, together with the residue of the estate.

Michael has no liability to CAT as he has disclaimed the benefit to him.

Mary has inherited the entire estate from her father John and has taken no benefit from Michael.

Example 2

Maureen dies testate and a widow and leaves the residue of her estate equally to her three children Noel, John and Mary.

Noel, who is living abroad, disclaims his one-third share of the residue under the will, which one-third share then passes by intestacy equally to the three children; i.e. one-ninth share each. If Noel also disclaims his one-ninth share of the residue passing under the partial intestacy, this one-ninth share then passes equally to John and Mary.

John and Mary each end up inheriting a half-share of the estate from Maureen.

Example 3

Paula inherits a house under her aunt Nora's will but disclaims the inheritance of the house in favour of her brother Tom. As it is not possible to disclaim a benefit in favour of somebody else, this is an inheritance taken by Paula from Nora and then a separate gift of the house by Paula to Tom. Both the inheritance and the later gift are taxable.

Example 4

Patrick dies and leaves his farm valued at €350,000 to his son Robert and the residue of his estate to his daughter Sheila. Robert, who has no interest in farming, decides to disclaim the bequest of the farm to him in consideration of a payment to him of €250,000 from the estate.

Robert is treated as taking an inheritance of €250,000 from his father Patrick.

Sheila is treated as taking an inheritance from her father Patrick of the farm and the residue of the estate, less the €250,000 passing to Robert.

3 Jointly held benefits passing by survivorship

Where property is jointly held by two or more persons, the death of one of them will result in a re-distribution of the benefit among the survivor(s). Section 13(1) provides that where joint tenants own property under a joint tenancy arrangement and one of them dies, the survivor(s) take an inheritance from the deceased joint tenant as disponer. Where one party to a joint tenancy agreement dies, that person's interest in the property automatically transfers to the surviving joint tenant(s) without the need for any further act.

4 Taxation of income accruing during the administration of an estate

Where it is shown that a beneficiary of the estate of a deceased person was charged to Income Tax on income that accrued to the estate during the period between the date of death and the valuation date of the beneficiary's inheritance, that income will not be taken into account in calculating that beneficiary's liability to Inheritance Tax, and the proportion of the debts, funeral and testamentary expenses that are payable out of the part of the estate represented by the accrued income will, if the figures justify apportionment, be disallowed accordingly. Evidence that the beneficiary has been treated for Income Tax purposes as succeeding to the property from the date of death should be furnished.

5 Co-directors and business partners assurance

These are policies that are effected purely for commercial purposes and agreed between the individual partners/shareholders on an arm's length basis without any intention to make a gift.

The approach to such policies, written in the form of own life in trust for others, is to treat the proceeds as exempt from Inheritance Tax in the following circumstances:

- Proceeds on death will be used to purchase the deceased's shareholding. Any surplus arising will be liable to Inheritance Tax.
- The capital sum under each policy will reflect the policyholder's shareholding.
- Payment of premiums will be made by the individual members, or on their behalf by the company or partnership out of the individual's own company or partnership account.
- New partner(s)/shareholder(s) can join the arrangement at any time, subject to the conditions applicable to the existing members of the plan.
- On withdrawal from the company or on retirement, the policy of the partner who leaves reverts to that person who will no longer benefit in the continuing arrangement, provided his or her shareholding is sold on withdrawal, otherwise the person can remain a party to the arrangement.

Such a policy will be an asset in the person's estate on his or her death and will not be exempt from Capital Acquisitions Tax (CAT).

- Where a partner refuses to join the arrangement or is unable to effect life insurance on medical grounds, he or she will be precluded from benefiting from the policies of his or her co-shareholders.
- On the death of a sole surviving partner or shareholder the policy on his or her life will be an asset in his or her estate and will not be exempt from CAT. Similarly, if a partnership breaks up or a company is wound up, policies that do not lapse will be liable on a death to CAT.
- The insurance policies can either be term assurance, endowment, or whole of life policies, with the death benefit only passing to the surviving shareholders.
- Co-directors/partnership insurance using 'Own Life' in trust must be supported by the following relevant documentation:
    - buy/sell (or double option) agreement;
    - reciprocal agreement;
    - trust document.

The equalisation of premiums is not a requirement once the policies are clearly effected as part of a commercial arm's length arrangement.

Early payment of the proceeds of these policies on foot of total and permanent disability or critical illness will not be regarded as giving rise to a CAT liability. Similarly, the proceeds of standalone critical illness policies will be exempted, provided the criteria set out above are met. Finally, it is permissible to provide for the probable future increase in the value of the policyholder's shareholding provided that this aspect is common to all policyholders. It must be emphasised however, that any surplus over and above that utilised to purchase the deceased's shareholding will be liable to CAT.