

Capital Acquisitions Tax Consolidation Act 2003

Section 29: Contingencies affecting gifts or inheritances

This document should be read in conjunction with section 29 of the Capital Acquisitions Tax Consolidation Act (CATCA) 2003.

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1 Introduction

Section 29 CATCA 2003 sets out the Capital Acquisitions Tax (CAT) treatment that applies where a gift or inheritance is given to a person which is to cease on the happening of a contingency. This document contains guidance on the operation of section 29.

2 Contingencies affecting gifts or inheritances

A person may receive a gift or an inheritance which is to cease on the happening of a contingency, such as a marriage or the attainment of a certain age. Where this is the case, the contingency is ignored when determining the taxable value of the gift or inheritance. If the contingency occurs, then the CAT will be adjusted as if the person took a limited interest in the gifted or inherited property for a period certain (i.e., the actual period during which he or she enjoyed the benefit of the property) and a repayment of any overpaid CAT can be claimed. This treatment does not apply where the contingency is the revocation of a gift subject to a power of revocation under section 39.

It may be the case that a substitute gift or inheritance is taken by a person on the happening of a contingency; for example, where a trust fund appoints a life interest in property which is to become an absolute interest if the beneficiary attains a certain age. The original benefit ceases on the appointment of another interest in the property and the substituted benefit is then taxable as a new gift or inheritance.

2.1 Example

Charles died on 9 July 2016 and left the residue of his estate consisting of securities and a bank account valued at €200,000 to his widowed sister Clare, for her life or, if she remarries, until the time of that marriage. The remainder was left to Clare's daughter Anne, absolutely.

Section 29 provides that the contingency, i.e. Clare's remarriage, is ignored for the purposes of calculating her CAT liability. As Clare is 45 years of age her life factor is .8283 (see Table A, Schedule 1). The taxable value of the benefit of her life interest is therefore €165,660 (i.e. €200,000 x .8283). With a Group B tax-free threshold of €32,500, her CAT liability is €43,942.

Clare remarries on 29 July 2019 which means that her CAT liability must be re-calculated. The taxable value of the benefit she received on 9 July 2016 is now based on her taking an interest in €200,000 for a period certain; i.e. from 9 July 2016 to 29 July 2019. This is a period of 3 years and 21 days - see Table B, Schedule 1 for the relevant values.

The value of the benefit received for 3 years is €36,720 (€200,000 x .1836). The value of the benefit received for 4 years is €47,400 (€200,000 x .2370), an increase of €10,680 over the value for 3 years. The proportion of this increase to be used is 21/365. This gives a value for the additional 21 days of €614.47 (€10,680 x 21/365) and a total value of €37,334 (€36,720 + €614.47).

Based on a revised taxable value of the benefit received on 9 July 2016 of €37,334, Clare's revised CAT liability is €1,595. She can therefore claim a refund of €42,346 (€43,942 - €1,595).

A second consequence of Clare's remarriage is that the remainder interest taken by Charles' niece Anne is accelerated. On 29 July 2019, Anne takes an absolute interest in the securities and the bank account. She is taxable on the value of the benefit on this date as a benefit taken from her uncle and not her mother.