

Capital Acquisitions Tax Consolidation Act 2003

Part 9: Exemptions

This document should be read in conjunction with Part 9 of the Capital Acquisitions Tax Consolidation Act (CATCA) 2003.

Document created September 2025.

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1 Introduction

Part 9 CATCA 2003 provides for a number of exemptions from Capital Acquisitions Tax (CAT). The availability of an exemption will depend on the nature of the relationship between the parties and on the nature of the benefits being provided. This manual provides an overview of the exemptions.

2 Exemption of small gifts

Section 69 CATCA 2003 provides an exemption for gifts (but not inheritances) of up to €3,000 taken by a person from any disposer in a calendar year. Any gifts within this limit are not taken into account in computing tax and are not included in any future aggregation of benefits taken. Where a gift exceeds this limit only the excess is to be taken into account for the purposes of calculating Gift Tax.

Example

Tom makes a cash gift of €30,000 to his granddaughter Joan in 2019. Tom has made no other gifts to Joan in 2019. The taxable value of the gift is €27,000 after the small gifts exemption of €3,000 is deducted.

As noted above, this exemption is not available for inheritances. However, it does apply in circumstances where a gift becomes an inheritance by reason of the death of the disposer within 2 years of the date of the gift.

3 Exemption for spouses and civil partners

Section 70 and section 71 CATCA 2003 provide for a full exemption for gifts and inheritances taken between spouses or between civil partners (within the meaning of the Civil Partnership Act 2010). There is no value limit to this exemption.

Example

John makes a gift of €10,000,000 to his wife Helen in 2020. This gift is completely exempt from Gift Tax.

3.1 Interval between date of death of disposer and taking of inheritance

The spouse/civil partner exemption applies to a donee or successor who is, at the date of the gift or at the date of the inheritance, the spouse/civil partner of the disposer. In cases where there is an interval between the date of death of the disposer and the taking of an inheritance by the disposer's surviving spouse/civil partner (for example, where the inheritance consists of an appointment made by trustees out of a discretionary trust created by the will of the disposer or where the inheritance consists of a remainder interest taken after a prior life interest created by the disposer's will) the surviving spouse/civil partner should be regarded as still

being the disposer's spouse/civil partner at the date of the inheritance even if the surviving spouse/civil partner has remarried in the period between the date of death and the date of the inheritance.

4 Exemption of certain policies of assurance

Section 74 CATCA 2003 provides for an exemption from tax for certain policies of assurance on the life of a person where neither the disposer nor the donee or successor is domiciled or ordinarily resident in the State, at the date of the disposition and at the date of the gift or inheritance, respectively.

With effect from 27 March 2013, the exemption applies to policies known as 'capital redemption policies' issued by life assurance companies. These are a specific type of life assurance where there is no actual life assured under the assurance contract, but the policy is of a type that is in practice regarded as part of life assurance business.

5 Exemption of certain investment entities

Section 75 CATCA 2003 provides for an exemption from tax for gifts and inheritances of units of certain investment entities (as defined in Part 27 of the Taxes Consolidation Act (TCA) 1997). Units held in collective investment schemes, common contractual funds, investment limited partnerships or investment undertakings are exempt from tax in cases where neither the disposer nor the donee or successor is domiciled or ordinarily resident in the State, at the date of the disposition and at the date of the gift or inheritance, respectively. The CAT exemption applies in the case of the transfer of units in an investment limited partnership notwithstanding that this type of entity has been removed from the definition of "investment undertaking" in section 739B(1) TCA 1997.

6 Exemption for charitable or public purposes

Section 76 CATCA 2003 provides that any gift or inheritance taken for purposes that are charitable or public in accordance with the law of the State is exempt from tax and is not taken into account in computing tax to the extent that Revenue is satisfied that it has been, or will be, applied to such purposes. The charitable or public purposes may be either inside or outside of the State.

Political donations taken and used for "political purposes" as defined by the Electoral (Amendment) Act 2001 by political parties, politicians and election candidates satisfy the "public purposes" requirement of section 76 provided they meet the various requirements under that Act in relation to the receipt, amount, holding, use and recording of political donations.

7 Exemption of heritage property

Section 77 and section 78 CATCA 2003 exempt from CAT gifts and inheritances of pictures, prints, books, manuscripts, works of art, jewellery, scientific collections or other things not held for the purposes of trading where the following conditions are satisfied:

- (1) the property is of national, scientific, historic or artistic interest,
- (2) the property is kept permanently in the State, and
- (3) reasonable facilities for viewing are allowed to members of the public or to recognised bodies or to associations of persons.

A specific claim must be made to Revenue for this exemption.

This exemption also applies to houses and gardens in the State not held for the purposes of trading in respect of which:

- (1) on a claim made to Revenue appear to be of national, scientific, historic or artistic interest,
- (2) reasonable facilities for viewing were allowed to the public during the three-year period prior to the date of the gift or inheritance, and
- (3) reasonable facilities for viewing are allowed to the public following the gift or inheritance.

Where heritage property that would qualify for the exemption in section 77 has been held through a family controlled company (within the meaning of section 27 CATCA 2003) any gift or inheritance of the shares in that company will qualify for exemption from CAT to the extent that the value of the shares relates to the heritage property.

8 Exemption of certain inheritances taken by parents

Section 79 CATCA 2003 provides that any inheritance taken by a parent of the disposer is exempt from CAT if that disposer took a non-exempt gift or inheritance from either or both of his or her parents within the five-year period prior to his or her death. It is not necessary that the inheritance be of the same property or of the same value as the prior gift or inheritance.

Example

In 2020, Noel gifted his son Tony a house. The market value of the house was €620,000. Tony paid CAT on the gift of the house in the amount €93,060 ((€620,000 - €3,000 - €335,000) x 33%). On the death of Tony in 2023, Noel inherits the house from Tony. As Tony took a non-exempt gift from Noel in the 5 years prior to his death (i.e. the house), the inheritance is exempt from CAT under section 79.

9 Exemption for payments relating to retirement

Section 80 CATCA 2003 provides that any retirement benefit, redundancy payment or pension paid to an employee or a former employee out of funds provided by the employer is not a gift or inheritance for the purposes of the CATCA 2003.

10 Exemption of certain securities

Section 81 CATCA 2003 provides for an exemption from CAT for gifts and inheritances of certain **securities** and units in certain unit trust schemes (within the meaning of the Unit Trusts Act 1990), where the trust deed restricts the property subject to the trust to securities that are exempt under this section.

The **securities** within the scope of this exemption are securities that are exempt from taxation by virtue of any enactment, or by virtue of the exercise of any power under any enactment, when they are in the beneficial ownership of a person who is neither domiciled nor ordinarily resident in the State.

To qualify for an exemption under section 81, it must be shown to the satisfaction of Revenue that:

- (1) the securities or units were comprised in the disposition continuously for a period of 15 years (6 years if acquired prior to 24 February 2003) immediately before the gift or inheritance,
- (2) the securities or units were comprised in the gift or inheritance at the date of the gift or inheritance and at the valuation date, and
- (3) the donee or successor is neither domiciled nor ordinarily resident in the State at the date of the gift or inheritance.

The condition at (1) above will not apply where:

- (a) the disposer was neither domiciled nor ordinarily resident in the State at the date of the disposition, or
- (b) the securities or units were purchased before 26 March 1997, and the disposer was neither domiciled nor ordinarily resident in the State at the date of the gift or inheritance.

10.1 Distribution of section 81 securities on the wind up of a unit trust

Where section 81 securities are held in a unit trust that is being wound up but certain parts of the securities are not sold but are distributed in specie to the unit-holders, then, provided all other conditions laid down by section 81 are fulfilled and the direct ownership of the securities commences at the instant the unit-holders' ownership of the units ceases, the period of time for which unit-holders held the units will be treated as aggregable with the period for which they directly hold the securities.

11 Exemption where disposition was made by the donee or successor

Section 83 CATCA 2003 provides that CAT is not chargeable on a gift or inheritance taken by a donee or successor under a disposition made by that donee or successor on the basis that a person cannot take a gift or inheritance from himself or herself.

Example

George sets up a discretionary trust in 2015 into which he transfers €2,000,000. He nominates himself, his spouse and his children as the beneficiaries of the trust. In 2017 the trustees appoint €1,000,000 from the trust to George. This payment is exempt from CAT because it is a benefit taken by George from himself.

12 Exemption relating to retirement benefits

Section 85 CATCA 2003 provides for an Inheritance Tax exemption, in certain circumstances, for inheritances taken by a child over the age of 21 where that inheritance comprises:

- an approved retirement fund (section 784A TCA 1997), or
- an approved minimum retirement fund (section 784C TCA 1997)¹;
- a vested* personal retirement savings account (sections 787A and 787G(4),(4B) TCA 1997) (for inheritances received on or after 27 March 2013), or
- a vested* retirement annuity contract (section 787(1) TCA 1997), or
- a Pan-European Pension Product (PEPP) (as defined in section 787V TCA 1997) where assets of the PEPP are treated as having been made available to an individual in accordance with subsection (4) of section 787AA TCA 1997.

*Deemed to vest on the fund owner's 75th birthday.

13 Exemption of certain transfers following dissolution of marriage or civil partnership

Section 88 CATCA 2003 provides for a CAT exemption in respect of transfers of property between separated or divorced individuals where the property is transferred pursuant to certain specified Court Orders.

¹ Approved Minimum Retirement Funds (AMRF) were abolished with effect from 31 December 2021 in Finance Act 2021.

14 Exemption of certain transfers by qualified cohabitants

Section 88A CATCA 2003 provides for a CAT exemption in respect of gifts and inheritances taken by a qualified cohabitant in accordance with a court order made under Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

A more recent version of this manual is available.