Capital Acquisitions Tax Consolidation Act 2003

Section 104: Allowance for Capital Gains Tax on the same event

This document should be read in conjunction with section 104 of the Capital Acquisitions Tax Consolidation Act (CATCA) 2003.

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1 Introduction

Section 104 CATCA 2003 provides for a credit for Capital Gains Tax (CGT) against Capital Acquisitions Tax (CAT). Certain events can result in a CAT liability and also constitute a disposal for CGT purposes and, accordingly, two separate taxes can be charged **on the same property on the same event**. The situations where this can occur are:

- on gifts of real or leasehold property, stocks and shares etc.;
- on the death of a life tenant where a further life interest arises;
- on the appointment by trustees of property out of a discretionary trust whether the trust was created under a will or under a settlement during the lifetime of the settlor; and
- on the early break up of a trust.

2 Operation of the relief

The relief is confined to property that is doubly taxed. Not all property in a gift or inheritance will necessarily also be liable to CGT.

The CGT liability is not simply deducted from the CAT liability. Instead, a credit must be given for the CGT paid. This credit cannot exceed the amount of CAT that is attributable to the property that has been doubly taxed.

CGT arising on the disposal of assets in the course of the administration of an estate does not arise on the actual inheritance, which is the event that gives rise to CAT. Therefore, a credit for CGT is not given in this situation. However, the amount of CGT paid may be deducted as a liability to arrive at the taxable value of the inheritance once it arises prior to the valuation date of the inheritance.

The credit for CGT is withdrawn where the particular property is disposed of within the period of two years commencing on the date of the gift or inheritance.

There is an exception to the two-year retention period in the case of life assurance policies referred to in section 730GB TCA 1997, which provides that where ‘appropriate tax’ is due to be paid on the death of a life assurance policyholder, that tax shall be treated as an amount of CGT paid for the purposes of section 104 CATCA 2003. As a life assurance policy must be cashed in and cannot be retained, it is not possible for the beneficiary to retain the property as required and consequently the two-year clawback provision is disapplied in such instances[1].

A transfer of property does not qualify for the relief where another type of relief applies; for example, where there is a transfer of business property which qualifies for both CGT retirement relief (section 598 TCA 1997) and CAT business relief (section 92). Where these reliefs are subsequently clawed back due to a disposal of the relieved business property, the CGT arising on the original transfer is allowable

[1] Finance Act 2018 (section 51/Schedule 1). This amendment takes effect from 19 December 2018.

as a credit against the CAT which becomes payable as a result of the clawback. However, CGT arising on the sale of the relieved business property may not be credited against the CAT arising as it did not arise on the same event as the CAT liability which was the original transfer.

3 Deduction of CGT for CAT purposes

Where a house is transferred charged with a mortgage or subject to payment of partial consideration, the entire CGT amount attributable to the disposal (being a disposal of the whole house) is deductible from the entire CAT amount attributable to the disposition (being a disposition of the whole house).

4 Temporary credit for allowable CGT

In most cases where both CAT and CGT are charged on the same property on the same event and where accordingly, a credit for CGT against CAT is allowable under section 104 CATCA 2003, the CGT will not have been paid at the time the CAT return is being submitted. In such cases, Revenue will allow a temporary credit until such time as the allowable CGT is actually paid.

5 Examples of the operation of the relief

5.1 Partial relief

John takes an appointment of property from a discretionary trust comprising cash and shares. The cash is not liable to CGT whereas the shares are liable to both CAT and CGT. Assume the CGT liability on the shares is €6,000. If the CAT liability is €9,000, i.e. €4,000 on the cash and €5,000 on the shares, the credit in respect of the €6,000 CGT paid is limited to €5,000 leaving a net CAT liability of €4,000.

5.2 Claw back of reliefs

In June 2015 Andrew retires at the age of 60 and gifts his business (an engineering company with a market value of €850,000 and which he originally purchased 10 years previously for €500,000) to his daughter Ruth. Andrew qualifies for full CGT retirement relief on the disposal. Ruth qualifies for business relief on the gift and, as she has not previously received any gifts or inheritances under the Group A threshold, has no CAT liability in respect of this benefit.

When Ruth sells the business in August 2019, within 6 years of having acquired it, the CGT retirement relief is clawed back resulting in a CGT liability. As she does not replace the business property with other relevant business property, the CAT business relief is also clawed back.

In addition, as the value of the business has increased to €910,000 in the interim, she has an additional CGT liability on the sale of the business.

CGT liability

Original gift - €850,000 - €500,000 @ 33%	€115,500
Subsequent sale - €910,000 - €850,000 @ 33%	€19,800
Total CGT liability	**€135,300**

CAT liability

Value of the gift	€850,000
Deduct small gift exemption	(€3,000)
Deduct available Group A threshold in June 2015	(€225,000)
Taxable value	€622,000
Total CAT liability - €622,000 @33%	**€205,260**
Deduct credit for CGT on gift	(€115,500)
Net CAT liability	**€89,760**