Introduction to Capital Acquisitions Tax

Capital Acquisitions Tax Manual Part 1

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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1.1 Capital Acquisitions Tax

Capital Acquisitions Tax (CAT), comprising both a Gift Tax and an Inheritance Tax, was introduced by the Capital Acquisitions Tax Act 1976 (CAT Act). Over the years the CAT Act provisions were amended and extended by various Finance Acts.

Capital Acquisitions Tax provides for the taxation of:

- Taxable Gifts taken on or after 28 February 1974
- Taxable Inheritances taken on or after 1 April 1975

In addition to CAT on gifts and on inheritances, the Finance Acts of 1984 and 1986 introduced a third tax element, a tax on Discretionary Trusts.

A Probate Tax was additionally introduced by the Finance Act 1993 but this tax lasted only a few years and was abolished by the Finance Act 2001.

The Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) consolidated the various legislative provisions enacted over the years.

The 2010 Finance Act introduced a number of administrative changes in CAT including:

- introduction of a new pay and file regime;
- compulsory electronic filing of all CAT reliefs;
- introduction of surcharge for the late filing of CAT returns;
- abolition of secondary accountability and
- abolition of the 12-year charge on property rule.

1.2 Gift and Inheritance Tax

1.2.1 What is a gift?

In general, where a person, the donee, becomes beneficially entitled in possession to any benefit for less than full consideration and there is no death involved he/she is deemed to take a gift.

1.2.2 What is an inheritance?

In general, where a person, the successor, becomes beneficially entitled in possession to any benefit for less than full consideration and it is taken on a death he/she is deemed to take an inheritance.

Tax is payable if the taxable value of gifts and inheritances exceed certain thresholds.

The rate is then applied on the excess over the threshold amount.

1.2.3 Tax- free thresholds for Gift and Inheritance Tax

There are three tax-free thresholds depending on the relationship between the disponer and the beneficiary.

Group A threshold - Applies where the beneficiary is a child (including certain foster children) or minor child of a deceased child of the disponer. Parents also fall within this threshold where they take an absolute inheritance from a child.

Group B threshold - Applies where the beneficiary is a brother, sister, niece, nephew, or lineal ancestor or lineal descendant of the disponer.

Group C threshold - Applies in all other cases.

(Note - Gifts and Inheritances taken by a Spouse or Civil Partner are exempt from Capital Acquisitions Tax).

Please use this link to access current and historic threshold amounts.

1.2.4 What property is liable to Gift and Inheritance Tax?

All property in the State is liable to gift/inheritance tax.

Assets outside of the State are subject to gift/inheritance tax if:

- The disponer or transferor is resident or ordinarily resident in the State at the date of the disposition or
- The beneficiary or recipient is resident or ordinarily resident in the State at the date of the gift or inheritance.

1.2.5 Exemptions and Reliefs for Gift and Inheritance Tax

- A gift or inheritance taken by a Spouse or Civil Partner is exempt from CAT.
- The first €3,000 of the total value of all gifts taken from any one disponer in a calendar year is exempt from CAT.
- An inheritance taken by a parent on the death of a child to whom either parent had previously made a non-exempt gift in the previous 5 years is exempt from CAT.
- A gift or inheritance for public or charitable purposes is exempt from CAT.
- An inheritance of a Dwelling House which was the principal private residence of the disponer at the date of his or her death and which was continuously occupied by the beneficiary as his or her only or main residence for three years immediately prior to the inheritance and which the beneficiary continues to occupy as his or her only or main residence for six years after the date of the inheritance is exempt from CAT. The beneficiary must not be entitled to any interest in any other residential premises at the date of the inheritance.
- Gifts of dwelling houses to dependent relatives of a donor may also qualify for the exemption. A dependent relative is a direct relative of the donor, or of the donor's spouse or civil partner, who is permanently and totally incapacitated because of physical or mental infirmity from maintaining himself or herself or who is over the age of 65. Where a gift of a dwelling house qualifies for the exemption, the dwelling house does not have to have been the principal private residence of the donor.

- A gift or inheritance of Heritage property is exempt from CAT provided certain conditions are met.
- Where a gift or inheritance consists of agricultural property, the market value of the agricultural property may be reduced by 90% provided certain conditions are met.
- Where a gift or inheritance consists of business property, the value of the business may be reduced by 90% provided certain conditions are met.
- Certain gifts and inheritances taken by a nephew or niece of the disponer are entitled to the Group A threshold.
- Where Capital Gains Tax (CGT) and Capital Acquisitions Tax (CAT) arise on the same property on the same event, the CGT can be credited against the CAT liability provided the property is not disposed of within 2 years of the event giving rise to the CAT and CGT.
- Where CAT is charged more than once on the same property on the same event, the tax which is earlier in priority is allowed as a credit against the tax which is later in priority.

1.2.6 Calculation of Gift and Inheritance tax

Any benefit received since 5 December 1991 from within the same group threshold is aggregated for the purposes of determining whether any tax is payable on the current benefit.

Current and historic rates of Capital Acquisitions Tax are available on the revenue website.

Note: The legislation provides that the relevant group thresholds, rates of tax, reliefs, etc. used to determine a beneficiary's tax liability are those pertaining at the date of benefit and not the valuation date.

1.2.7 Administration of Gift and Inheritance Tax

A beneficiary is required to file a self-assessment return (Form I.T. 38) where benefits with a value of at least 80% of the tax-free threshold have been received by that beneficiary (section 46(4) CATCA 2003). This 80% threshold value is calculated by aggregating the value of the current benefits with the value of previous benefits received by a beneficiary since 5 December 2001. However, where a benefit comprises agricultural or business property and agricultural or business relief applies, a return must be filed **regardless** of the value of the agricultural or business property and its proportion of the particular group threshold.[1]

The Finance Act 2010 introduced a fixed pay and file date for CAT of 31 October. All gifts and inheritances with a Valuation Date in the 12 month period ending on the previous 31 August will be included in the return to be filed by 31 October of that year. The valuation date of a gift is the date of the gift and the valuation date of an inheritance is normally the date the administration of the estate has been completed.

The Finance Act 2011 brought forward the pay and file date to 30 September in respect of the year of assessment 2011.

The Finance Act 2012 amended the pay and file date for CAT from 30 September to 31 October. Therefore, all gifts and inheritances with a valuation date in the 12-month period ending on the previous 31 August will be included in the return to be filed by 31 October.

CAT returns **must** be filed through myAccount or ROS unless the following criteria apply:

- No relief/exemption/credit is claimed, apart from the small gift exemption;
- The benefit taken is an absolute interest without conditions or restrictions;
- The property included in the return was taken from only one disponer and is not part of a larger benefit or series of benefits taken by the beneficiary on the same day.

If the above criteria apply the return may be filed on the short form or through myAcount or ROS.

[1] Requirement introduced by Finance Act 2020 (section 55), wef 19 December 2020.

In line with other taxes a surcharge is applied as a sanction for those who do not comply with the filing deadline. The surcharge is based on a percentage increase in the total tax payable for the year for which the return is late (subject to an overall cap).

- A 5% surcharge applies, subject to a maximum of **€12,695**, where the tax return is delivered within two months of the filing date (e.g., for the year of assessment 2016, any date between 1 November 2016 and 31 December 2016 inclusive).
- A 10% surcharge, up to a maximum of **€63,485**, will be applied where the tax return is **not** delivered within two months of the filing date.

Interest also arises for late payments.

Taxpayers can file a return with payment or pay separately and while it is recommended that payments be made through myAccount or ROS, payment can also be made through the post by cheque.

Payment of tax may be facilitated by the use of certain policies of insurance, the proceeds of which are exempt from CAT provided they are used to pay the tax liability.

IT39 - Guide to completing the IT38 return (Pay and File)

1.3 Discretionary Trust Tax

The term Discretionary Trust is generally applied to a trust under which trustees have absolute discretion to apply the income and or the capital of the trust property in favour of a particular person or persons, who are named as objects of the trust. The object of the trust has no interest in possession in the trust property; he or she has merely a hope that the trustees may exercise their discretion in his or her favour.

There is a once-off charge to discretionary trust tax at the rate of 6% on the latest of the following dates:

- The date on which the property becomes subject to the trust
- The date of death of the settlor
- The date on which there are no principal beneficiaries of the trust aged less than 21 years. (The principal beneficiaries are the spouse, the children and the children of a predeceased child of the settlor

The 6% once-off charge is reduced to 3% if the property is transferred absolutely out of the trust within 5 years.

An annual charge at the rate of 1% also arises on 31 December each year on the property in the trust.