

Disclaimers of Benefits

Part 06

This document should be read in conjunction with section 12 CATCA 2003

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1. Introduction

Section 12 of the Capital Acquisitions Tax Consolidation Act 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. 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 is, therefore, a double charge 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 was 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.

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.