Business Relief
Capital Acquisitions Tax Part 12

This document should be read in conjunction with sections 90 to 102A of the CATCA 2003

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Table of Contents

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

12.1 Introduction

A relief from capital acquisitions tax for all gifts and inheritances taken on or after 11 April, 1994 of relevant business property (see paragraph 4.2.2.2) was introduced in the Finance Act, 1994. The relief only applies to mainstream gift and inheritance tax. It does not apply to discretionary trust tax. Subsequent Finance Acts have amended the original provisions.

The relief was introduced for a variety of reasons viz.

(i) to encourage and reward enterprise, thereby countering the perception that CAT is a punitive tax which penalises successful entrepreneurs and discourages expansion of businesses;

(ii) to prevent the sale or break-up of businesses in order to pay the CAT liability;

(iii) to answer the demands of the business sector who wanted a relief similar to agricultural relief to be made available to it and who were pointing to the existence of business relief in the UK.

The relief amounts to a flat 90% reduction in respect of the taxable value of relevant business property.

Example

Michael inherited the family business on the death of his father on 1 May, 2004. The taxable value of the business was €400,000. Business relief is calculated as follows

	€
Taxable value prior to relief	400,000
Reduction of 90%	360,000
Revised taxable value after relief	40,000

12.2 Claiming the Relief / Information Booklet

Where Business Relief is claimed, IT38 CAT Return must be filed electronically through the Revenue Online Service (ROS).

12.3 Operation of the Relief

The relief operates as follows:

(i) the taxable value of the gift or inheritance is ascertained using the normal CAT rules;

(ii) the taxable value of the gift or inheritance attributable to the relevant business property is then ascertained[*];

(iii) then the portion of that value on which relief can be granted is ascertained[#];

(iv) the relief is calculated by reducing the figure at (iii) by 90%

(v) finally the figure at (i) is reduced by the amount of the relief at (iv).

More details on how the relief is calculated are contained in paragraph 12.6.

12.4 Conditions for Granting the Relief

Summary
Before the relief can be granted **all** of the following questions must be answered in the affirmative:

(i) Was the gift or inheritance taken on or after 11 April, 1994?

(ii) Does the gift or inheritance consist of relevant business property?

(iii) Was the relevant business property comprised in the disposition (or owned by the disponer or his/her spouse) for the specified period immediately prior to the gift or inheritance?

Though all the above questions may be answered in the affirmative the value of the relevant business property may still have to be restricted – see for example paragraph 12.5.5 - Exclusion of Value of Certain Assets

Each one of these matters is considered in detail in paragraph 12.5.

[*] In calculating this taxable value special regard must be had to the treatment of liabilities (see paragraph 5).
[#] In determining the value of relevant business property on which relief can be granted certain assets may have to be left out of the account. In addition, the replacement property and the successive benefits rules may operate to restrict the value on which relief can be granted (see paragraph 4.2.4).

12.5 Conditions Step-by-Step

12.5.1 Was the Gift or Inheritance taken on or after 11 April, 1994

This is a question of fact. Gifts or inheritances taken before 11 April, 1994 do not qualify for business relief.

12.5.2 Does the Gift or Inheritance consist of Relevant Business Property

- General

Business relief is granted on the transfer of relevant business property. The relief is not available on the transfer of individual assets, even if those assets were used in the business.

It is crucial to an understanding of how the relief works to realise that what is being granted is a relief on the transfer of a business, or a share in a business, or the shares or securities of a company carrying on a business. The relief is not available on the transfer of individual assets even if those assets were used in the business.

- **Transfer of a Business or a share in a business, or the shares or securities of a company carrying on a business.**

The question of whether a relevant business property or just assets that had been used in a business are transferred is a matter to be decided by reference to the facts in any particular case.

Where the whole of the business and all of the business assets are transferred, the issues is straightforward and Business Relief would apply (provided all other conditions are satisfied).

Where substantially the whole of the business is transferred but some of the business assets are not transferred, the position needs to be examined by reference to the facts. Relief should not be refused in a situation where substantially the whole of the business assets are transferred to a beneficiary and as a matter of fact the business continues to be carried on by that beneficiary.

As a general guide where all the assets of a business are transferred - apart from some assets comprising less than 10% of the total value of the business - and the business continues to be carried on by the person who inherited it, relief should **not be refused**. This 10% figure is not an absolute determining amount.

Cases where slightly more than 10% of the total value of a business is not transferred should be considered on their merits by reference to all the facts. The views of Capital Taxes Branch should be sought in cases of doubt.

See Examples below.

Example Business Relief Allowed

Under his Will a deceased, left all of his farmland to one particular nephew and left his farm implements and machinery to another nephew. The farmland comprised 268 acres and was valued at €207,000. The farm implements and machinery, which were old and largely obsolete, were valued at €2,000.

The nephew who inherited the farmland was not previously a farmer. On inheriting the farmland he carried on farming the land.

The question to be determined is whether the nephew who inherited the farmland had inherited property consisting of a business or interest in a business which qualified for business relief or whether he had merely inherited an individual asset (farmland) used in the business which did not qualify for business relief.

On these facts, the nephew who inherited the farmland should **not be refused** Business Relief because the farm implements and machinery (valued at less than 10% of the value of the land) were not transferred with the land.

The nephew who inherited the farm implements and machinery would not, of course, be entitled to Business Relief.

Example Business Relief Not Allowed

Anne started a crafts business in her own premises twenty years ago. The crafts are purchased by local shops for sale to the public. She works in the business with her nephew, Vincent, as her employee. She wishes to give a gift of the premises to Vincent but the business will continue to be hers. The premises will not qualify as relevant business property.

NB: If she had transferred the premises with the business, the premises would have formed part of the relevant business property.

- Definition of "Relevant Business Property"

In the words of section 93 (1) CATCA 2003 relief is available on gifts or inheritances of **"relevant business property"**. However, as we will see in subsequent paragraphs the fact that the property is relevant business property does **not** mean that the relief will automatically apply: the conditions laid down in those paragraphs must also be met.

"Relevant business property" is defined as:

(a) a business i.e. the business of a sole trader (e.g. corner shop, pub); *or*

(b) an interest (i.e. share) in a business. Typical situations where an interest in a business might pass would include a sole trader going into partnership with a family member or a partner wishing to retire and transferring his or her interest in the partnership to another person who will then become a partner (subject, of course, to the agreement of the other partners).

(c) **unquoted** shares or securities* of a company carrying on a business provided that:

- the beneficiary will, on the valuation date and **after**# taking the gift or inheritance, either;

(i) control the powers of voting relating to all questions affecting the company as a whole which if exercised would yield more than 25% of the votes capable of being exercised thereon.

> **Example**
>
> ABC Ltd., a private company, was incorporated in Ireland on 1 January, 2000. The shares are held as follows:
>
> | | |
> |---|---|
> | Mary Murphy | $33\frac{1}{3}$% |
> | John Walshe | $33\frac{1}{3}$% |
> | Michael Reid | $33\frac{1}{3}$% |
>
> Mary now wishes to gift her holding to her son, Maurice. Following the gift Maurice will have a $33^1/3$% holding. The shares will qualify as relevant business property.

* All of these terms are explained in the Appendix to this Part.

\# The wording of section 93(1)(b), (c) and (d) is: "either by themselves alone or together with other shares or securities in that company in the absolute beneficial ownership of the donee or successor on [the valuation date]".

If the company had issued a class of share or security which only carried voting rights limited to the winding-up of the company and/or to questions primarily affecting that class then that class is to be ignored when deciding whether the beneficiary meets the above conditions (section 93(2)); *or*

(ii) own any percentage of the aggregate nominal value of all the issued shares and securities of the company and be in control of the company within the meaning of section 27 of the CATCA 2003 *or*

(iii) own 10% or more of the aggregate nominal value of all the issued shares and securities of the company and have worked as a full-time working officer or employee in the company (or in the case of a group, for any company or companies in the group) throughout the period of 5 years ending on the date of the gift or inheritance.

A "full-time working officer or employee" is defined as someone who devoted substantially the whole of his or her time to the service of that company (or in the case of a group to companies within the group) in a managerial or technical capacity (section 90(1)).

For Example

GHI Ltd., a private company was incorporated in Ireland on 1 November, 2000. It has issued only one class of share. These shares are held as follows:

John Buckley (parent)	40%
Mary Buckley (parent)	40%
Michael Buckley (son)	20%

Catherine, who is not related to the Buckleys, has worked full-time (as accounts manager) in the company since it was incorporated. John has decided to gift Catherine sufficient shares to give her a 10% shareholding. The shares will qualify as relevant business property provided Catherine continues to work full-time in the company until the date of the gift.

(d) **quoted**[*] shares or securities of a company carrying on a business but only if all of the following conditions are met:

(i) the disponer owned the shares or securities[#] immediately prior to the disposition (gift/inheritance/settlement);

[*] This exception to the general rule that relief be available only on unquoted shares or securities is made so that the very availability of the relief does not deter expanding family businesses from seeking a quotation on the Stock Exchange.
[#] or other shares or securities of the same company which are represented by these shares or securities.

(ii) the shares or securities were unquoted at—

– the time they were acquired by the disponer, or at

– 23 May, 1994,

whichever is the later date; and

(iii) all of the other (i.e. other than being “unquoted”) conditions laid down under (c) above are satisfied.

(e) Land, buildings, plant and machinery* (referred to hereinafter as “land, etc.”) which are *used* in a business carried on by a company or a partnership but which are *owned* by the disponer rather than by the company or the partnership, will qualify for business relief provided that:

(i) – in the case of a company, the company was controlled by the disponer or by the disponer and his or her spouse or civil partner immediately before the gift or inheritance (“control” being defined as controlling the powers of voting on all questions affecting the company as a whole which if exercised would have yielded a majority (i.e. over 50%) of the votes capable of being exercised thereon: however, votes attaching to a particular class of share which are limited to questions involving the winding-up of the company and/or to questions primarily affecting shares or securities of that class will be ignored for the purposes of deciding whether or not the disponer controlled the company).

[Note: In many family run companies each spouse or civil partner holds 50 per cent of the share capital, as a result of which neither has “control” of the company - and neither would therefore qualify for business relief. Section 83 Finance Act 2014 addressed this, in relation to gifts or inheritances taken on or after 23 October 2014, by providing that the control requirement is satisfied in the case of spouses and civil partners, where, **taking their shareholdings together,** they control the company].

– in the case of a partnership, the disponer was a partner immediately before the gift or inheritance (Section 93(2));

* If there is a doubt about whether a particular asset is plant or machinery the income tax rules are to be applied. In general terms "plant" encompasses whatever apparatus is used in the business for the purposes of the business. It includes all goods and chattels, whether fixed or movable, which are permanently employed in the business. It does not include stock-in-trade bought or made for sale.

(ii)

- The land, etc., was used# wholly or mainly for the purposes of the business concerned for a continuous period of 2 years immediately prior to the date of the inheritance in the case of an inheritance taken on the death of the disponer and in all other cases for a continuous period of 5 years prior to the date of the gift or inheritance (Section 100 (4)(a)).

  If at any time during the required period of use, the land, etc., was used for the personal benefit of the disponer or his or her relatives then it cannot be treated as if it were used **wholly or mainly** for the purposes of the business concerned (Section 100(7)).

  In the case of land or buildings only, if part of any land or a building was used exclusively for the purposes of the business concerned throughout the required period but the land or building does not satisfy the "wholly or mainly" test, then that part shall be treated as a separate asset (Section 100(5)).

- Land, etc., which has replaced other land, etc. will qualify as relevant business property if:

  – in the case of an inheritance taken on the death of the disponer, the replaced land, etc. and the replacement land, etc. taken together were used wholly or mainly for the purposes of the business concerned for at least 2 years out of the 3 year period immediately prior to the date of the inheritance, or

  – in all other cases for at least 5 years out of the 6 year period immediately prior to the date of the gift or inheritance (Section 100(4)(b)).

- There is no requirement that the replacement land, etc. be of a similar nature to the land, etc. it replaced e.g. new plant could be bought with the proceeds from the sale of land.

- Land, etc. may be replaced any number of times and the replacement land, etc. will qualify as relevant business property provided that, taken together, the 2 out of 3 years or 5 out of 6 years "period of use" conditions is met (Section 100(4)(b)).

- The successive benefits rule (see paragraph 12.5(iv) – *Successive Benefits*) also applies. In such cases the land, etc. or

Whether they were *"used"* or not is a question of fact.

any land, etc. it replaced must have been used wholly or mainly for the purposes of the business concerned throughout:

- the period between the time the disponer or his or her spouse acquired the land, etc. (the earlier benefit) and the death of the disponer (the subsequent benefit), or

- the part of that period during which the land, etc. and any land, etc. it replaced were owned by the disponer or his or her spouse (section 100(4)).

(iv) the land, etc., is transferred at the same time as the partnership interest or the shares or securities (section 93(5));

(v) the interest in the business or the shares or securities also qualified as relevant business property immediately before the gift or inheritance (section 93(5)); and

(vii) of course, the conditions laid down in paragraph 12.2.4 relating to period of ownership must also be satisfied in relation to both the land, etc., and the business/shares or securities.

> **Example**
>
> Liam became a partner in a firm of solicitors in 1998. He bought the building in which the business is carried on in 2002. He has decided to retire. His share in the business including the building will be transferred to his daughter. As both the interest in the business and the building are being transferred at the same time the building will qualify as relevant business property.

(Sections 93(1)(e), 93(5), 100(4).)

- **Definition of "Business**

A "business" **includes** a business carried on in the exercise of a profession or vocation but it does not include a business carried on otherwise than for gain (section 90(1)). In other words all the usual types of business carried on for profit are included as are the various professions (e.g. law, medicine, accountancy) and vocations.

To qualify for the relief, therefore, two tests have to be satisfied i.e.

(i) a business must be carried on; and

(ii) the business must be carried on for gain.

The term "business" involves a wider concept than trade. The courts have defined it, for example, in the following terms:

"it denotes the carrying on of a serious occupation"
(Lord Diplock in Town Investments v DOE [1977] 1 All ER at page 835)

"anything which occupies the time and attention and labour of a man for the purpose of profit" (Jessel MR in Smith v Anderson [1880] 15 Ch D page 258)

"a serious undertaking earnestly pursued" (Widgery J in Rael Brook Ltd v Minister of Housing and Local Government [1967] 1 All ER at page 266)

> "any occupation or function actively pursued with reasonable or recognisable continuity" (Lord Cameron in Morrison's Academy [1978] STC at page 8).

In relation to rented property, the term was analysed in some detail by Diplock J in the Privy Council case of American Leaf Co. v Director-General [1979] AC 676 at age 684:

> "In the case of a private individual it may well be that the mere receipt of rents from property that he owns raises no presumption that he is carrying on a business. In contrast, in their Lordship's view, in the case of a company incorporated for the purpose of making profits for its shareholders any gainful use to which it puts any of its assets prima facie amounts to the carrying on of a business. Where the gainful use to which a company's property is put is letting it out for rent, their Lordships do not find it easy to envisage circumstances that are likely to arise in practice which would displace the prima facie inference that in doing so it was carrying on a business.
>
> The carrying on of a business, no doubt, usually calls for some activity on the part of whoever carries it on, though, depending on the nature of the business, the activity may be intermittent with long intervals of quiescence in between".

Although businesses not carried on for gain will be fairly rare, they are considered to include, inter alia:

– certain clubs e.g. golf clubs, tennis clubs, etc.

– the management and provision of leisure activities for the benefit of the shareholders and their friends, e.g. fishing or shooting not run on a genuine commercial basis (alternatively it may be argued that these are not business activities - see Customs and Excise Commissioners v Lord Fisher [1981] 2 All ER 147).

Where, exceptionally, a company does not have a business, or a business carried on for gain, and the parties decline to accept that such a business is necessary to, enable the shares or securities to constitute "relevant business property", it may be pointed out that even if they were correct (which is not accepted) relief would still not be available. As there would then be no "business concerned" for the purpose of satisfying section 100(2), all the assets of the company would constitute "excepted assets" and so be disqualified from any relief.

- **Excluded Businesses**

General

The following types of business (so called "excluded businesses") are specifically excluded from the relief (section 93(3)):

(a) businesses which consist wholly or mainly of dealing in currencies, securities, stocks or shares, land or buildings; and

(b) businesses which consist wholly or mainly of making or holding investments;

If the **wholly or mainly** test is satisfied and the business is an excluded business then **no** part of the business, or the shares or securities (in the case of a company) will qualify as relevant business property.

If, however, the wholly or mainly test is not satisfied then the business, etc., will qualify as relevant business property but, as will be seen in paragraph 12.5(iv) below, certain assets must still be ignored when valuing the relevant business property for the purposes of the relief.

"Wholly or Mainly" Test

(a) General

"Mainly" should be treated as meaning over 50%.

In applying the wholly or mainly test the position should normally be looked at over a reasonable period prior to the gift or inheritance, to allow for temporary fluctuations in activity and performance. (See FPH Finance Trust Ltd v CIR 26 TC 131.) Where, however, there has been a clear and definite change in direction, only the position after that change should be taken into account.

The wholly or mainly test is not an easy test to apply. As section 93(3) does not refer to the income or the capital or the activities of the business it is reasonable to assume that all aspects of the business must be considered. The official position, therefore, is that each case has to be decided on its own merits, having regard to the preponderant activities, assets and sources of income or gains of the business in question. It is not possible to lay down any precise ground rules. Each business has to be looked at in the round. It may, however, be readily accepted that, where the majority of ***both*** the asset value ***and*** profit of the business is attributable to trading activities, relief is available.

Similarly it would generally be difficult to deny relief where the majority of the asset value ***or*** profit was attributable to trading.

The trading turnover will normally exceed the investment income but relief should normally be denied where the majority of the asset value and income is attributable to investment and the trading turnover is fairly modest. Some support for this may be obtained from:

– Foster's Capital Taxes Encyclopaedia G1.12:

  "There is no guidance in the legislation as to the interpretation of "wholly or mainly" but it is considered that the ratio of trading profit to investment income should be the prime consideration, and asset value of secondary importance", and

– McCutcheon's Capital Transfer Tax, 2nd edn, 14-14A:

  "Presumably regard will be had primarily to (i) the ratio of trading profit to investment income and (ii) the assets of the business, the former normally being the factor to be given the greater weight."

These extracts should, however, be used with care and should not be relied upon where, although the majority of asset value and income is attributable to investment, there is a large trading turnover. It is in this area that the greatest difficulty arises and in such cases all the factors must be assessed, including:

(i) the ratios of asset value and profit attributable to trading and investment respectively;

(ii) the ratio of turnover to investment income;

(iii) the degree of activity involved on the trading as opposed to the investment side measured for example by size of the labour force (sub-contracting work will count for less), directors' time, etc.'

(iv) any particular reasons for low trading profits, for example, the fact that the company was engaged in a low profit-making sector or was subject to heavy competition;

(v) whether the investments or their income were being used to subsidise trading losses, especially to carry it through a short term difficulty; and even

(vi) how the company was described in the Director's Report to the annual accounts (though this is a fairly weak point).

It is emphasised that the above factors are not intended to be exhaustive but merely illustrative of the considerations to be taken into account. Where there appears to be a case for treating a company as having a mainly investment business, because inter alia more than half its net income is derived from investments, a useful check may be to ask the Inspector of Taxes whether "management expenses" are being deducted under section 15 of the Corporation Tax Act, 1976. Section 15 provides that "management expenses" may be deducted from the profits of resident investment companies and an "investment company" is defined as "any company whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom...". If deductions are being made, this may be cited in support of the mainly investment argument. The absence of a deduction, however, should not be regarded as in any way precluding a mainly investment argument, where the facts otherwise support it.

(b) Holding Companies and their subsidiaries

Where a company holds shares in subsidiaries, those shares constitute investments. However, section 93(4) preserves relief where a company is wholly or mainly engaged in being a holding company of one or more subsidiaries whose business(es) is/are not wholly or mainly excluded business(es) or where the value of the shares or securities is wholly or mainly attributable, directly or indirectly, to non-excluded businesses. For this purpose "holding company" and "subsidiary" have the same meanings as in section 155 of the Companies Act, 1963 – see Appendix to this Part.

In practice, where the company is being valued on a group basis by reference to the consolidated accounts, it will generally be acceptable to apply the wholly or mainly test in section 93(3) to the total group activities without detailed examination of each subsidiary.

Should, however, the answer on the group basis be uncertain, or the parties require it, the test should be applied strictly viz. giving separate consideration to the holding company and its individual subsidiaries. For this purpose regard should generally be had to the value of the individual subsidiaries rather than the level of any dividends paid to the holding company, as the latter may be somewhat arbitrary and subject to manipulation.

(c) Companies which are Members of a Group

Section 99 provides two important restrictions to the relief. The first concerns the case where a company is a member of a group (see Appendix to this Part) and the business being carried on by any other company in the group is an excluded business. In such cases, unless the excluded business consists wholly or mainly of holding land or buildings wholly or mainly occupied by another member (or other members) of the group the value of the shares or securities in the company must be reduced, for the purposes of business relief (but not for the purposes of CAT), to what it would be if the subsidiary(ies) and/or associated companies carrying on the excluded businesses were not member(s) of the group.

This exclusion may possibly have a substantial effect on the value eligible for business relief. For example, where a group was worth €1m with 30% of its value attributable to property investment conducted by a subsidiary, 30% of the value transferred might be excluded from relief. Also, where there is a dispute as to whether the wholly or mainly test in section 93(3) is satisfied, and the value of the group is largely attributable to subsidiaries/associated companies carrying on excluded businesses, this exclusion may render that dispute of marginal importance.

Where the shares or securities qualify for relief but the group business includes an excluded business, officers should (except so far as already ascertained) ask for the name of each subsidiary/associated company, details of its activities and a copy of the last year's accounts prior to the valuation date. Where it then appears that any of the subsidiaries/associated companies is engaged wholly or mainly in carrying on an excluded business, the parties should be advised of the need to agree a further value for the shares or securities for business relief, excluding from the group each subsidiary/ associated company which is carrying on an excluded business.
Secondly, section 99(2) provides that the value of (unquoted) shares or securities must be reduced if the shares or securities of another company in the group are quoted on the valuation date unless:

(i) the disponer owned the unquoted shares or securities* immediately prior to the disposition; and

(ii) the quoted shares or securities* were unquoted at:

- some time prior to the gift or inheritance when they were in the beneficial ownership of the disponer (or a member of the group while being a member of that group), or

- 24 May, 1994,

whichever is the later date.

* or other shares or securities of the same company which are represented by those shares or securities.

- ***Meaning of "Dealing"***

"Dealing" means dealing as a principal and not as an agent. Thus the normal activities of, for example, **estate agents**, **merchant bankers**, **investment advisers** and **stockbrokers** are not excluded businesses.

The reference to dealing in land and buildings in section 93(3) does not include a genuine **building** and **construction company** holding a number of completed properties for sale or a normal land bank. Similarly it does not apply to a property development company provided:

(i) the land is acquired with a view to the development and disposal of the completed development; and

(ii) most of the profit is derived from the enhanced value of the property resulting from the development (as opposed to increases in the value of the land from the obtaining of planning permission or a general rise in land values).

Care should, however, be taken to identify a building or development company which retains and lets its completed property, as this may, over time, convert the business into one of mainly investment holding.

"Dealing" is restricted to the 6 categories specified in section 93(3) viz. currencies, securities, stocks or shares, land or buildings. It does not, therefore, relate to, for example, **commodities** or **money lending** (and provided this involved regular transactions it could not be regarded as "investment holding" either – *"meaning of investment".*

- ***Meaning of "Investment"***

The word "investment" is considered to extend wider than the 6 categories specified in Section 93(3).

In the CTO Scotland case of Gardiner the Special Commissioners stated:

> "The case of Commissioners of Inland Revenue v. Broadway Car Co. (Wimbledon) Ltd. 29 TC 214 [also 1946 2 All ER 609] is indeed authority for the proposition that investments are not limited to Stock Exchange investments; but it is also authority for the proposition that the word is not a term of art and has to be construed according to the common understanding of businessmen applying ordinary common sense principles."

The Gardiner case concerned **commodities** and, following the Commissioners' decision and the advice of the solicitor in the subsequent case of the Ann B. Wilson Settlement (BP 301/86), regular dealing in commodities may be accepted as trading and not investment. Where, however, dealings are only infrequent, the case should be referred to the Assistant Principal.

“Investment” is not considered to include **office equipment rental** or **plant and vehicle hire**. On the other hand it clearly includes **unfurnished lettings**, without the provision of significant services.

Previously the position was not entirely clear regarding **furnished and holiday lettings**. However, in the light of the decisions in Gittos v. Barclay (Inspector of Taxes) [1982] STC 390 and Griffiths (Inspector of Taxes) v. Jackson/Pearman [1983] STC 184 the letting of furnished accommodation, whether on a long or short-term basis, and whether for holiday or other purposes, should generally be treated as “investment”.

These cases reaffirmed and restated the principle that the “exploitation of property rights” cannot be treated as trading. In Griffiths, Vinelott J. stated at pages 191/2:

> “The principle that income derived from the exploitation of the owner's proprietary interest in the land is not taxable as the profits of a trade remains unaffected. Thus the income derived by the owner of property from letting the property furnished, whether for a short or a long term and whether in small or large units and whether in self-contained units or to tenants who share a bathroom or kitchen or the like, is not income derived from carrying on a trade but is still taxable under [Sch A] or, in the case of [para 4, under Case VI of Sch D]. Of course if the owner provides services and the services are separately charged or the receipts can be otherwise apportioned in part to the provision of the services any profit derived from the provision of the services will be taxable as the profits of a trade.”

Vinelott J. also dealt with the point of the business occupying a large amount of management time at page 194:

> “The business may, as in this case, occupy much of the taxpayer's time or even be one which requires his whole time and attention. The taxpayer may put as much or more work into his business as, for instance, someone whose business consists in arranging licences to fix vending machines on the property of others and who daily or at less frequent intervals collects the proceeds and replenishes the machines. It is not too easy to see why in the modern world a business consisting of the exploitation of the right of property in land should be treated differently from a business consisting of the exploitation of other assets. However the principle is now too

> deeply embedded in the law to be altered except by legislation."

The same point was made by Warner J. in the further case of Webb (Inspector of Taxes) v. Conelee Properties Ltd. [1982] STC 913 when he stated at page 920:

> "It seems to me, however, that Counsel for the Crown was right when he said that mere management activity was not an activity that was capable of giving rise to the existence of a trade, and that the degree or amount of that activity made no difference so long as it was only management."

According to the report, management in this context includes such matters as advertising, taking bookings, collecting rents, inspecting the property, preparing it for visitors and carrying out repairs.

In Griffiths, Vinelott J. also drew a distinction at page 193 between situations where the landlord parts with the right of occupation of the rooms, as in the case of tenancies, and situations where he retains a continued right of access as in the case of **hoteliers** or **lodging housekeepers**. However, this view was not adopted by Goulding J. in Gittos and he approached the comparison between letting furnished flats and running a hotel at page 395, as follows:

> "So the real question that was before the General Commissioners in the present case ... was whether the activities of the taxpayer's wife over and above the mere exploitation of her landed property were significant enough to make her a trader and not a mere landowner who derived an income by exploiting her property. It is not of course possible to give an answer to such a question in general terms. It is a question of fact and degree. I can quite see that there are forcible arguments on both sides. The taxpayer, in his address in reply, took the case of an hotelier, who is undoubtedly carrying on a trade, and pointed out how similar, so far as they extend, are his wife's activities in respect of Millendreath to those of an hotelier. But, of course, they do not go nearly so far or require so much activity on the owner's part."

Consequently, while exclusive occupation may be a factor, the essential points appear to be as follows:

(i) the rental earning aspect of a business remains an investment activity even though it is accompanied by the provision of services;

(ii) although the provision of services as such may be regarded as a trading activity, the level of such services would have to be exceptional to supplant the rental aspect as the major activity for the purposes of the "wholly or mainly" test.

As regards (ii) the provision of, for example, cleaning, fresh linen and laundry services would not approach the exceptional mark. It is in fact difficult to envisage any level of service outweighing the rental contribution where **self-catering** is involved and only very exceptionally, therefore, will business relief be properly due for holiday and other furnished lettings.

Reference may usefully be made to the Special Commissioners decision in Salter (BP 310/88), though each case must be decided on its own merits.

Any case where the parties dispute the relevance of the above tax cases, or otherwise persist in maintaining that relief is due in respect of a furnished or holiday letting business, should be referred to the Assistant Principal.

The position regarding **caravan sites** was essentially unaffected by the Gittos and Griffiths decisions. The letting of furnished caravans, as opposed to furnished houses and flats, does not constitute the exploitation of property rights and hence investment. On the other hand the letting of pitch sites only would. However, most sites offer a range of letting options and usually also provide some facilities. In some cases this may be confined to purely basic facilities such as water and electricity. At the other extreme, the site may provide a full holiday package including shops, a swimming pool, club bar and entertainment. The availability of relief in each case must therefore depend on the particular facts.

It is preferable to approach a case by reference to the type of letting activity viz. how much of the letting relates to furnished caravans owned by the business and how much to pitch sites. As a general guideline, where a business's own furnished caravans account for at least half the total number of lettings it may be appropriate to accept the business as primarily trading, irrespective of the facilities provided (assuming there are no other "investment" activities). Conversely, where most of the lettings relate to pitch sites and facilities are restricted to the provision of electricity, water, toilets and a shop (and there are no other activities) relief should be denied on the grounds that the business was mainly engaged in the exploitation of its property rights (as discussed, for example, in the Griffiths case).

The position concerning **chalets** is uncertain. Where, therefore, the number of chalets is such that the availability of relief depends on their treatment, the case should also be referred to the Assistant Principal.

In other cases involving the admission of people onto land it will be necessary to consider whether the income received amounted to nothing more than payments for the use of the site or whether it related, to a material extent, to the payment for facilities and services provided on the site: for an illustration of this distinction see the judgment of Lord Greene MR in Croft v. Sywell Aerodromes Ltd. 24 TC 126.

Conacre Lettings

The Circuit Court, in May 2008, gave a decision on Business Relief in a case where an inheritance of lands was taken and where the deceased person had, for the nine years prior to his death, let out the lands for grazing on **conacre** for nine months of each year. The Revenue Commissioners had sought to disallow business relief on the grounds that the lands were not relevant business property as the deceased's activities constituted a business wholly or mainly of making or holding investments. Accordingly, Revenue submitted, the deceased's business was excluded from being "relevant business property" by the words of section 93(3). Section 93(3) disallows business relief to a business, which consists wholly or mainly of making or holding investments.

The Judge decided that the lettings were a business and that the business did not fall within the exclusion of "making or holding investments" in section 93(3).

The Judge, in his judgement, indicated that he paid close attention to the 1935 Irish Supreme Court decision in Howth Estates v Davis, an income tax case concerning management expenses where it was held that a landowning company was not making investments.

The Judge also took into account in his decision that there was evidence of supervision or management by the landowner sufficient to amount to a business.

Agricultural Property

Agricultural property in incorporated or unincorporated form is eligible for Business relief.

12.5.3 Does the business need to be carried on wholly or mainly in the State on the date of the Gift or Inheritance in order to qualify for business relief?

The Finance Act 2001 removed the condition that the business must be carried on wholly or mainly in the State to qualify for relief.
The Finance Act 2001 also removed the condition that the company must be incorporated, and the assets situated, in the State.

The changes apply to gifts/inheritances taken on or after 15 February 2001.

12.5.4 Was the Relevant Business Property comprised in the Disposition for the specified period ?

- General

To safeguard to some extent against businesses or shares or securities being acquired merely for the purposes of getting business relief, relevant business property will not qualify for the relief unless it was comprised in the disposition for a minimum period prior to the date of the gift or inheritance i.e. relevant business property must have been owned either by:

(i) the disponer* alone, or by the disponer and his or her spouse; or

(ii) by the trustees (in the case of settlements) alone, or by the trustees, the disponer and/or the disponer's spouse,

for a continuous period of:

– 2 years immediately prior to the date of inheritance in the case of an inheritance taken on the death of the disponer, or

– 5 years in all other cases (section 94).

The 2 year or 5 year rule is referred to as the **minimum ownership period**.

The minimum ownership period is relaxed for:

(a) replacement property, and for
(b) successive benefits.

- Replacement Property (Section 95)

*Where the disponer became entitled to the relevant business property on a death s/he is deemed to have owned it from the date of death (section 130).

- Property which has replaced other property will qualify as relevant business property if:

  - the replaced property would have qualified as relevant business property but for the minimum ownership period had the gift or inheritance been taken immediately prior to the replacement, and

  - in the case of an inheritance taken on the death of the disponer, the replacement property and the replaced property taken together were comprised in the disposition for at least 2 years out of the 3 year period immediately preceding the date of the inheritance, or

  - in all other cases, for at least 5 years out of the 6 year period immediately preceding the date of the gift or inheritance.

- There is no requirement that the replacement property be of a similar nature to the property it replaced. For instance, the replacement property rules enable a business carried on by a sole trader or by a partnership to be transferred to a company in exchange for shares or securities in that company and still qualify for the relief.

Example

Brendan commenced a drapery business in 1996. He sold the business in 2003 and within 6 months he had bought a newsagents with the proceeds. He decided to give a gift of the new business to his daughter with effect from 1 June, 2004. Business relief will apply to the new business because, taken together, Brendan's period of ownership of the drapery and the newsagents amounted to over 5 years in the 6 year period immediately prior to the date of the gift.

- If the value of the replacement property exceeds the value of the property it replaced the relief will be restricted to what it would have been had the replacement not been made. If, in the above example, the drapery business had been sold for €100,000 and the newsagents though bought for €150,000 was worth €180,000 on the valuation date the value eligible for relief would be restricted to €120,000 as follows:

$$€180{,}000 \quad x \quad \frac{€100{,}000}{€150{,}000} \quad = \quad €120{,}000.$$

In deciding whether the relief should be restricted any changes resulting from the formation, alteration or dissolution of a partnership or from the acquisition of a business by a company controlled (within the meaning of section 27 CATCA 2003) by the former owner of the business should be disregarded.

- There is no limit to the number of times that relevant business property can be replaced by other relevant business property within the 3 or 6 year period.

- Successive Benefits (Section 97)

- If the disponer or his or her spouse had taken a gift or inheritance of property (the earlier benefit) and the disponer had died before either he or she and his or her spouse, had owned the property for the required period (i.e. for 2 years (or for 2 years out of the previous 3 years in cases where the property was replaced – see paragraph 12.5(iv) *"Replacement Property"* above) - the benefit now taken from the disponer (the subsequent benefit) may still qualify for the relief notwithstanding the minimum ownership period provided that the earlier benefit qualified for business relief (on the assumption that such relief existed at that time).

Example

Nuala decided to retire from the family business on 1 June, 2004. She gifted her 100 shares (the entire share capital) in PQR Ltd. to her brother, Tom. The gift of the shares qualified for business relief. Tom died suddenly on 1 July, 2004 and left what were previously Nuala's shares to his son, John. Business relief will apply notwithstanding the fact that Tom had only owned Nuala's shares for 1 month.

- The relief will be limited to the same proportion of the relevant business property in the subsequent gift or inheritance as the taxable value attributable to the relevant business property in the earlier gift or inheritance bore to its market value. If, in the previous example, Nuala had gifted her 100 shares (valued @ €10,000 on 1 June, 2004) to Tom in consideration of Tom giving her €1,000, then the relief available to John in respect of the benefit taken on 1 July, 2004, when the shares were valued @ €11,000, will be limited to €9,900 as follows:

Market value of earlier benefit €10,000

Taxable value of earlier benefit (€10,000 – €1,000) - €9,000

Fraction of subsequent benefit which will qualify for relief

$$\frac{(€10{,}000 - €1{,}000)}{€10{,}000} \times {}^{9}/_{10}$$

Amount of subsequent benefit which will qualify for relief €11,000 x $\frac{9}{10}$ = €9,900

- If the value of the replacement property exceeds the value of the relevant business property it replaced, the relief will be restricted to what it would have been had the replacement not been made. Again in deciding whether the relief should be restricted any changes resulting from the formation, alteration or dissolution of a partnership or from the acquisition by a company controlled (within the meaning of section 27 of the CATCA Act 2003) by the former owner of the business should be disregarded.

Example

Mary decided to retire from the family business on 1 June, 2004. She gifted her 100 shares (the entire share capital) in ABC Ltd. to her brother, Peter, on condition that Peter paid her €1,000. The gift of the shares qualified for business relief. Peter sold the shares and bought a newsagency. Peter died suddenly on 1 September, 2004 and left the newsagency to his son, Damian. On 1 June, 1994 the shares were valued @ €10,000. They were sold for €11,000. The newsagency cost €12,000 but was worth €15,000 on the valuation date of Damian's inheritance.

Value of subsequent benefit relief restricted to

$$\left(€15,000 \times \frac{€11,000}{€12,000}\right) = €13,750$$

Value of earlier benefit €10,000
Taxable value of earlier benefit
(€10,000 – €1,000) = € 9,000

Fraction of subsequent benefit which
will qualify for relief

$$\frac{€10,000 - €1,000}{€10,000} \times 9/10$$

Value of subsequent benefit (restricted
as above) €13,750

Amount qualifying for relief
€13,750 x 9/10 = €12,375

Part of current benefit not eligible for relief
€15,000 – €12,375 = € 2,625

There is no limit to the number of times that relevant business property can be replaced by other relevant business property.

12.5.5 Exclusion of Value of Certain Assets

- General

In view of the substantial nature of the relief business people will have a strong incentive to disguise private assets as business assets if they can. To prevent this section 100 seeks to exclude certain assets from the relief. We have already seen that the relevant business property (business/interest/ shares or securities) must have been **owned** for a minimum period prior to the gift or inheritance [paragraph 12.5(iv)]. It is also necessary (under section 100) to look through the business being carried on to the underlying assets to ensure that each asset has been used for business purposes for a minimum period prior to the gift or inheritance. The value attributable to any asset not so used must be left out of the account when determining what part of the taxable value attributable the relevant business property qualifies for the relief. A full list of all the assets, the value attributable to which must be left out of the account, is set out in *"Excepted Assets", "Excluded Property" & "Agricultural Property",* below.

In practice there are many cases – particularly involving minority shareholdings – where the exclusion of an asset would make little or no difference to the value attributable to the relevant business property.
For example, the value of a 10% shareholding is unlikely to be much affected by the exclusion of a private boat (see *"Excepted Assets*", below). A similar situation may also occur with a control shareholding where a company is being valued on a capitalisation as opposed to an assets basis. Where it appears, therefore, that the effect of the exclusion of a particular asset on the value attributable to the relevant business property will be small, the matter should not be pursued.

Where, however, shares are being valued by reference to the capitalisation value of a company, it should be remembered that the value of any substantial non-business asset ought to be added to the capitalisation value of the company and the added value on the non-business asset will clearly have to be excluded from relief.

- "Excepted Assets"

Section 100(1), (2) and (5) provides that the value attributable to the following assets (known as "excepted assets") must be left out of the account in determining what part of the taxable value of the relevant business property will qualify for business relief viz.

(i) any non-business assets i.e. investment assets (section 100(2)).

For Example

Ciaran, who owns all of the shares in STU Ltd., wishes to gift his shares to his daughter, Liz. STU Ltd. has net assets of €950,000 including quoted shares worth €50,000. Relief is calculated as follows:

Taxable Value prior to relief
€950,000

Value attributable to assets not used for
the purposes of the business (50,000)

Amount of taxable value which can benefit
from the relief (950,000 – 50,000)= 900,000

Reduction of 90% on €900,000 = (810,000)

Revised taxable value after relief
(950,000 – 810,000) = 140,000

Where, however, the business concerned is being carried on by a company which is a member of a group any business assets (i.e. business assets other than investment assets) used wholly or mainly for the purposes of a business carried on by any other company in the group will be treated as if they were used for the purposes of the business concerned provided that that other company was a member of the group:

– at the time of the use, and
– immediately prior to the gift or inheritance.

However, business assets used by a company in the group which is wholly or mainly carrying on an excluded business will not be treated as if they were used for the purposes of the business concerned unless the excluded business consists wholly or mainly in the holding of land or buildings wholly or mainly occupied by companies in the group whose business is not wholly or mainly an excluded business.

(ii) any business assets which if owned for at least 2 years prior to the gift or inheritance were not being used wholly or mainly for the purposes of the business for a continuous period of 2 years prior to the gift or inheritance. However, business assets acquired within 2 years prior to the gift or inheritance need not be ignored provided that they were being used wholly or mainly for the purposes of the business for the whole of the period between the date they were acquired and the date of the gift or inheritance. In other words there is no restriction on the acquisition of new assets by an existing business provided the business itself qualifies for business relief and that the assets satisfy the above test;

It should be borne in mind that a subsidiary which is wholly or mainly carrying on an excluded business will in any event be totally left out of account. In other words there is no need to consider the “excepted assets” test in relation to any assets of that subsidiary.

If an asset was used at any stage for the **personal benefit** of the disponer or for a relative (as defined in the CAT Act) of the disponer then it cannot be treated as if it was used wholly or mainly for the purposes of the business concerned (section 100(7)).

For Example

YZ Ltd. bought a house in Kerry in 2002 which is used intermittently for corporate entertaining. However, the shareholders use it on a number of occasions each year for family holidays. The house will not qualify for the relief.

This provision is aimed at conspicuous and substantial assets e.g. a mansion house, penthouse flat, private yacht or collection of expensive chattels which – although represented as a business asset – are simply held by (say) a company as a device for providing private benefit to the persons in question. The provision should not be deployed against the non-business use of non-luxury cars.

Where **land or buildings** are not used wholly or mainly for business purposes and prima facie constitute “excepted assets”, section 100(5) gives a measure of relief in respect of the value of any part of the property which is used <u>exclusively</u> for the purposes of the business. In this context, exclusive use will embrace such use by another member of the group provided it satisfies the above conditions.

The land or building is to be treated as if it were two separate assets consisting of the part used exclusively for business purposes and the remainder not so used. If the part used exclusively is a viable severable entity for the purposes of valuation (possibly because it has a separate access) it will be valued as such. Otherwise, or if that gives a higher figure, the value should be “such proportion of the value of the whole as may be just”.

The emphasis is on exclusive use for the purposes of the business so that mere casual or intermittent use of part of a building, e.g. as a temporary office, will not qualify under this provision. If, however, a room is equipped as a permanent store-room or is purpose-built for some business operation, and in either case is solely so used, the value attributable to that part of the property will qualify for relief and the value of the remainder will be excluded as an excepted asset.

It is a question of evidence whether a particular asset was used wholly or mainly for business purposes during the relevant period. With the exception of assets which were used for the personal benefit of the disponer or his/her relative, (except non-luxury cars), the **requirement as to use should be interpreted reasonably** in the case of those businesses which appear to be pursuing normal business activities rather than serving as a repository for non-business assets.

Because of the diversity of circumstances of valuation, it is not practicable to lay down detailed rules as to the calculation of the part of the value transferred to be excluded in respect of excepted assets. The basic approach, however, is to exclude from relief that part of the value attributable to relevant business property which might fairly be attributed to the value of excepted assets. In essence, the answer lies in the difference between the value of the relevant business property calculated with the excepted asset included and excluded respectively.

The legislation is silent as regards the treatment of debts that may be attributable to excepted assets that are ignored for the purposes of relief. Revenue practice is to treat the value of an excepted asset for business relief purposes as its net value where the debts are specifically charged on the asset. Where debts are not so charged, it is not considered that the asset should be reduced by a proportion of the uncharged debts. The rationale for this is that the shares in a company are being valued as if the excepted asset(s) did not exist in the first place and, therefore, all the other assets should have to bear all of the debts. On this basis, it would not be correct to allow the debts against excepted assets.

- "Excluded Property"

Section 100(8) provides that any **new business or interest in a business** acquired by a company (or by a company within the same group) within the minimum ownership period must be left out of the account for the purposes of calculating the relief appropriate to the shares or securities of that company.

For Example

VWX Ltd., was incorporated in 1988 as a property holding company. In September, 1993 it sold off all its property and purchased a cheese manufacturing business with the proceeds. One of the shareholders wishes to gift her shares in the company to her son, the gift to take effect on 1 August, 1994. While the shares have been owned for more than 5 years they still will not qualify for the relief because their value is entirely attributable to the value of the new business.

If that new business replaces other business property the value of the new business will not be left out of account provided the combined periods of ownership of both businesses would satisfy the minimum ownership period. Where the value of the replacement business is higher than the value of the property replaced the relief is restricted to what it would have been had the replacement not been made.

- Agricultural Property

Gifts/Inheritances taken on or after 10 February 2000 of agricultural property can obtain the benefit of business relief. The relief will not be granted to agricultural property in respect of which a donee/successor has obtained agricultural relief. A donee/successor cannot claim both business relief and agricultural relief in respect of the same property.

12.6 Calculating the Relief

General

As already seen in paragraph 12.3 a number of steps have to be gone through before the relief can be calculated.

Remember:

- Businesses not being carried on for gain;

and

- Excluded Businesses,

do not qualify as relevant business property.

Business or an interest in a business

Step (i) Calculate the taxable value attributable to the value of the business or interest. For this purpose the value of the business or (interest) is the net value. The net value is arrived at by reducing the market value of the assets comprised in the gift or inheritance and which are used in the business (including goodwill) by the market value of any liabilities (to which the gift or inheritance is subject) incurred for the purposes of the business (e.g. borrowings). (Section 98(b)).

In the case of a partnership, only partnership assets and partnership liabilities are to be taken into account. (section 98(c)).

In deciding whether a particular asset was used in the business the accounts and information supplied should be examined to see how the assets shown (in particular, cash, bank accounts, building society accounts and similar assets) were used prior to the gift or inheritance. Any assets not used in the business are to be omitted when arriving at the net value.

In calculating the taxable value attributable to the value of the business (or interest) the following general rules should be applied to the treatment of liabilities/consideration where the acquisition consists of both relevant business property and other property e.g. an inheritance of residue consisting of a business, land, etc. and other non-business property:

<u>deduct from the value of the business:</u>	–	all liabilities payable out of residue which were incurred for the purposes of the business (section 98); and
	–	all liabilities payable out of residue which were an encumbrance on the business (section 28(11), CATCA 2003) whether or nor incurred for the purposes of the business; and
<u>deduct from the value of the other property:</u>	–	any other liabilities (or consideration) provided that where the value of the other liabilities exceeds the value of the other property then the excess should be deducted from the value of the business.

Step (ii) It must be decided whether any part of the taxable value attributable to the value of the business (or interest) is attributable to the value of any of the items listed in paragraph 12.5.5 (these will generally have already been excluded in arriving at the net value). If it is then the value so attributable must be deducted to arrive at the value on which relief will be granted.

Step (iii) Having calculated the value attributable to non-excepted assets, etc., it is then necessary to restrict that value if:

(i) the replacement property rules apply and the value of the replacement property exceeds the value of the property it replaced – see paragraph 12. for an example of how to restrict the relief; or/and

(ii) if the successive benefits rule applies and the taxable value attributable to the earlier gift or inheritance was less than its full value (e.g. because some consideration was paid or because the relief was restricted in some other way) – see paragraph 12.5.4 *"Successive Benefits"* for an example of how to limit the relief.

The resultant figure is the value on which relief can be granted.

Step (iv) Calculating the Relief:

– The taxable value of relevant business property is reduced by a flat 90% and the resulting figure equals the amount of the business relief applicable.

Step (v) The amount of relief should be deducted from the figure at step (i).

Shares or Securities of a Company carrying on a Business

Step (i) Calculate the taxable value attributable to the shares or securities.

Step (ii) It must be decided whether any part of the taxable value attributable to the shares or securities is attributable to:

– the value of the shares or securities of any company in the group carrying on excluded businesses, and

– the value of any quoted shares or securities (paragraph 12.5.2 "*Wholly or Mainly" Test* – subparagraph (c)).

If it is, then the value so attributable must be deducted to arrive at the value on which relief will be granted.

Step (iii) Follow steps (ii), (iii), (iv) and (v) in paragraph 12.6 "Business or an interest in a business (above).

Where an "excepted asset" is charged or encumbered at the valuation date, the net value of the asset should be looked at. However, it is not considered that an "excepted asset" should be reduced by a proportion of the uncharged debts. This is because we are essentially concerned with comparing the value of the shares if the excepted asset was removed from the company – in which case the other assets would have to bear all the debts.

This does not preclude taking into account the need for sufficient liquidity to cover the payment of liabilities in determining what constitutes an excepted asset in the first place – particularly as regards the amount to be treated as surplus cash. However, once the amount of cash and/or other assets to be treated as "excepted assets" have been determined, they should not be reduced further.

12.7 Clawing Back the Relief (Section 101)

If the business, or any business which replaced it, ceases to trade within a period of 6 years after the valuation date the relief will be clawed back unless the business is replaced within 1 year by other relevant business property. However, there will be no clawback of the relief where the business ceases to trade by reason of bankruptcy or as a result of a bona fide winding-up on the grounds of insolvency.

The relief will also be clawed back if, within that 6 year period the business or the shares or securities, are sold, redeemed or compulsorily acquired and are not replaced within 1 year by other relevant business property. The relevant business property being sold, redeemed or compulsorily acquired may not be replaced by quoted shares or securities.

If there is a subsequent gift or inheritance of the same property within the said 6 year period (e.g. because the beneficiary died within 6 years of taking the gift or inheritance) a sale or other event happening after the date of the subsequent gift or inheritance will not trigger a clawback in relation to the earlier gift.

If only part of the relevant business property or of any replacement property ceases to qualify for the relief the clawback will relate only to that part.

The clawback provisions will not apply to any land, building, plant or machinery, or any replacement land, building, plant or machinery, for so long as they are used for the purposes of the business concerned.

Appendix - Definitions

"Associated Company " has the meaning assigned to it by section 16(1)(b) of the Companies (Amendment) Act, 1986 (section 90(1)) viz.

"16.—(1) Subject to the provisions of this section, where at the end of the financial year of a company, the company—

(b) holds a qualifying capital interest equal to 20 per cent. or more of all such interests in an undertaking that is not its subsidiary undertaking (in this section referred to as "an undertaking of substantial interest")."

A **"group "** consists of:

- a company,
- its subsidiaries,
- its associated companies,
- the associated companies of its subsidiaries, and
- the subsidiaries of its associated companies (Section 90(3)).

"Holding Company " has the meaning assigned to it by section 155 of the Companies Act, 1963 (Section 90(1)).

"quoted v. unquoted ": quoted means quoted on a recognised stock exchange and unquoted means not so quoted (Section 90(1)).

If relief is claimed for shares or securities quoted on the Unlisted Securities Market (USM) on the basis that such shares fall within the meaning of "unquoted" the relief can be allowed but Legislation Branch should be informed.

"Securities " may be treated as including any debt which is either charged on property or is evidenced by a document under seal. Debts such as debentures and loan notes, even if described as "unsecured" may, therefore, rank as securities.

"Subsidiary " is defined in Section 155 of the Companies Act, 1963 (Section 90(1)).