

Credit for Capital Gains Tax

Part 13

This document should be read in conjunction with Section 104 of the
Capital Acquisitions Tax Consolidation Act 2003

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13.1 Introduction

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

- 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 discretionary trustees of property out of a discretionary trust whether the trust arose under a will or under a settlement during the lifetime of the settlor
- on the early break up of a trust.

13.2 Conditions of the relief

- The relief is confined to assets that are doubly taxed;
- The credit for Capital Gains Tax can not exceed the amount of CAT referable to the assets that are doubly taxed. Not all assets in a gift or inheritance will necessarily also be liable to Capital Gains Tax
- Capital Gains Tax 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 Capital Gains Tax is not given. However, the amount of Capital Gains Tax paid may be deducted as a liability in order to arrive at the taxable value of the inheritance once it arises prior to the valuation date of the inheritance
- For gifts and inheritances taken on or after 21 February 2006, the credit for Capital Gains Tax is withdrawn where the asset is disposed of within the period of two years following the gift or inheritance. For gifts and inheritances taken on or after 21 January 2011, the two year retention period commences on the date of the gift or inheritance.

13.3 Example of the operation of the relief

It is not possible to simply deduct the Capital Gains Tax liability from the CAT liability. Instead, a credit must be given for the Capital Gains Tax paid. This credit can not exceed the amount of CAT that is referable to the assets that have been doubly charged to both taxes.

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