

Miscellaneous issues

Capital Acquisitions Tax Part 19

This document should be read in conjunction with sections 8, 28, 30, 40, 51, 59, 76, 82, and 104 CATCA 2003

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19.1 Claims for wages etc.

There is a presumption against contractual relations within the family. See *Jones v Padavatton* (1961 1 W.L.R. 328) and *Balfour v Balfour* (1919 2 K.B. 571). Claims by relatives against the estate of a deceased person for wages (e.g. for nursing and maintaining the deceased or for taking over the responsibility of working the deceased's farm) or for the granting of accommodation to the deceased should generally be disallowed because, in the nature of things, they tend not to be accompanied by evidence of legally enforceable contracts.

19.2 Advances out of residue

Where different parts of the residue of the estate of a deceased person are retained successively in the form of advances to the residuary legatee by the deceased's personal representative-

- (a) each advance and the final distribution have (as indicated in section 30(5) CATCA 2003) a separate valuation date for inheritance tax purposes,
- (b) the inheritance tax on the residuary estate (a single inheritance) is apportioned between the different parts in exactly the same way as inheritance tax is apportioned when on a death a number of simultaneous inheritances with different valuation dates are taken by the same beneficiary, and
- (c) interest on the respective apportionments of tax is calculated from the respective valuation dates.

19.3 The state as ultimate intestate successor

Where, in default of any person taking the estate of a disponent who dies intestate, the State takes the estate as ultimate intestate successor, a person in whose favour the State's rights are waived is regarded as having taken an inheritance directly from the intestate disponent and not as having taken a gift from the State.

19.4 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).

19.5 Arrears of income tax etc. due to HMRC (reciprocal arrangement)

Arrears of income tax, CGT, etc. due to HMRC by a person domiciled in this country are allowed as a debt for CAT purposes, provided that the tax was actually paid and whether the deceased person died possessed of assets in the United Kingdom.

19.6 Exemption for charities

A gift or an inheritance which is taken for public or charitable purposes is exempt from CAT under section 76 CATCA 2003 to the extent that Revenue is satisfied that it has been, or will be, applied to purposes which in accordance with the laws of the State are public or charitable whether it is so applied within or without the State.

Under section 17(1)(a) CATCA 2003, discretionary trusts set up exclusively for purposes which, in accordance with the law of the State, are public or charitable are exempt from the charge to discretionary trust tax. Prior to the passing of the 2014 Finance Act, the exemption applied only to discretionary trusts created exclusively for public or charitable purposes in the State or Northern Ireland. The Finance Act 2014 removed the territorial limit of “the State or Northern Ireland” in respect of inheritances taken on or after 23 December 2014.

19.7 Child of a stepchild

Under section 2 CATCA 2003, a child includes a stepchild. Therefore, the Group A threshold applies to a stepchild and to a minor child of a deceased stepchild. If a child of a deceased stepchild is not a minor, the Group B threshold applies.

19.8 Spouse/civil partner of disponent

The spouse/civil partner exemption applies to a donee or successor who is, at the date of the gift or at the date of the inheritance, the spouse/civil partner of the disponent. In cases where there is an interval between the date of

death of the disponent and the taking of an inheritance by the disponent's surviving spouse/civil partner (for example, where the inheritance consists of an appointment made by trustees out of a discretionary trust created by the will of the disponent or where the inheritance consists of a remainder interest taken after a prior life interest created by the disponent's will) the surviving spouse/civil partner should be regarded as still being the disponent's spouse/civil partner at the date of the inheritance even if the surviving spouse/civil partner has remarried in the period between the date of death and the date of the inheritance.

19.9 Common law spouses

The Group C threshold applies to a common law spouse. However, the hardship provisions of section 59 CATCA 2003 may apply where the financial position of a surviving common law spouse and their children is particularly difficult; for example, where the principal asset was the family home and it is affected by a substantial inheritance tax liability as a result of the death of one of the spouses. Therefore, prior to the finalisation of cases involving gifts and inheritances taken by common law spouses, the possibility that section 59 may apply should be considered.

19.10 Donee or successor is a surviving spouse/civil partner of a closer relation of the disponent

Paragraph 6 of Part 1 of Schedule 2 CATCA 2003 provides that where, at the date of the gift or at the date of the inheritance, the donee or successor is the surviving spouse/civil partner of a deceased person who, at the time of his or her death, was of nearer relationship than such donee or successor to the disponent, that nearer relationship shall apply for the purpose of computing the tax on the gift or inheritance. In cases where the surviving spouse/civil partner has remarried prior to the date of the gift or inheritance, paragraph 6 is regarded as applying notwithstanding the remarriage.

19.11 Taxation of income accruing during the administration of an estate

Where it is shown that a beneficiary of the estate of a deceased person was charged to income tax on income that accrued to the estate during the period between the date of death and the valuation date of the beneficiary's inheritance, that income will not be taken into account in calculating that beneficiary's liability to inheritance tax, and the proportion of the debts, funeral and testamentary expenses that are payable out of the part of the

estate represented by the accrued income will, if the figures justify apportionment, be disallowed accordingly. Evidence that the beneficiary has been treated for income tax purposes as succeeding to the property from the date of death should be furnished.

19.12 The words “exempt from tax” in section 28(5)(e) CATCA 2003

Section 11 CATCA 2003 provides that an inheritance which consists of non-Irish property in a case where neither the disponer nor the beneficiary are resident or ordinarily resident in the State shall not be a taxable inheritance. The Revenue view is that, for the purposes of section 28(5)(e), this is an exemption of an inheritance.

19.13 Free loans: section 40 CATCA 2003

Where a person receives a loan of money at a nil rate of interest, Revenue’s view is that the best price referred to in section 40 (3) CATCA 2003 is the highest price a prudent lender/depositor could get in the open market from prospective prudent borrowers.

In practice, Revenue accepts the highest rate of return the person making the loan could obtain on investing the funds on deposit.

19.14 Connected gifts

Under section 8 CATCA 2003, gifts are deemed to come from the original disponer when they are gifted on within 3 years before or after the original gift. However, in cases where, for example, a gift (the first gift) is taken by a married child of the disponer and consists of a house or a site for a house and that child, in raising a mortgage on that property, finds that the lending institution as a requirement for the mortgage demands that the property is placed in the joint names of the spouses (the second gift), then provided adequate evidence is given that the transfer into the joint names is at the insistence of the lender and that the first gift was not made to enable or facilitate the making of the second gift, section 8(1) will not apply. Section 8(2) covers this situation and will also apply in all other cases where it can be shown to Revenue’s that such gifts are not so connected.

19.15 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.

19.16 Co-directors and business partners assurance

These are policies that are effected purely for commercial purposes and agreed between the individual partners/shareholders on an arm's length basis without any intention to make a gift.

The approach to such policies, written in the form of own life in trust for others, is to treat the proceeds as exempt from inheritance tax in the following circumstances:

- Proceeds on death will be used to purchase deceased's shareholding. Any surplus arising will be liable to inheritance tax.
- The capital sum under each policy will reflect the policyholder's shareholding.
- Payment of premiums will be made by the individual members, or on their behalf by the company or partnership out of the individual's own company or partnership account.
- New partner(s)/shareholder(s) can join the arrangement at any time, subject to the conditions applicable to the existing members of the plan.
- On withdrawal from the company or on retirement, the policy of the partner who leaves reverts to that person who will no longer benefit in the continuing arrangement, provided his or her shareholding is sold on withdrawal, otherwise the person can remain a party to the arrangement. Such a policy will be an asset in the person's estate on his or her death and will not be exempt from CAT.
- Where a partner refuses to join the arrangement or is unable to effect life insurance on medical grounds, he or she will be precluded from benefiting from the policies of his or her co-shareholders.

- On the death of a sole surviving partner or shareholder the policy on his or her life will be an asset in his or her estate and will not be exempt from CAT. Similarly, if a partnership breaks up or a company is wound up, policies that do not lapse will be liable on a death to CAT.
- The insurance policies can either be term assurance, endowment, or whole of life policies, with the death benefit only passing to the surviving shareholders.
- Co-directors/partnership insurance using 'Own Life' in trust must be supported by the following relevant documentation:
 - buy/sell (or double option) agreement;
 - reciprocal agreement;
 - trust document.

The equalisation of premiums is not a requirement once the policies are clearly effected as part of a commercial arm's length arrangement.

Early payment of the proceeds of these policies on foot of total and permanent disability or critical illness will not be regarded as giving rise to a CAT liability. Similarly, the proceeds of standalone critical illness policies will be exempted, provided the criteria set out above are met. Finally, it is permissible to provide for the probable future increase in the value of the policyholder's shareholding provided that this aspect is common to all policyholders. It must be emphasised however, that any surplus over and above that utilised to purchase the deceased's shareholding will be liable to CAT.

19.17 Government securities: section 81 CATCA 2003

Where section 81 securities are held in a unit trust that is being wound up but certain of the securities are not sold but are distributed in specie to the unit-holders, then provided all other conditions laid down by section 81 are fulfilled, and the direct ownership of the securities commences at the instant the unit-holders' ownership of the units ceases, the period of time for which unit-holders held the units will be treated as aggregable with the period for which they directly hold the securities.

19.18 Interest on claw-back of reliefs and exemptions

Certain CAT reliefs and exemptions can be wholly or partly clawed- back if an event occurs within a specified period following the gift or inheritance. Under section 51(3) CATCA 2003, interest will only be charged on the additional tax

from the date the relief or the exemption ceases to apply and not from the valuation date. Where a claw-back results from a sale of the property, the date of sale is the date the relief or exemption ceases to apply.

19.19 CAT & debt forgiveness arrangements

Section 5 CATCA 2003 provides that a person is deemed to take a gift where, under or in consequence of any **disposition**, that person becomes beneficially entitled in possession, otherwise than on a death, to any benefit otherwise than for full consideration in money or money's worth paid by such person.

By virtue of the definition of "disposition" in section 2 (1) CATCA 2003 the release, forfeiture, surrender or abandonment of any debt or benefit, or the failure to exercise a right may be subject to CAT in certain situations.

Where, for bona fide commercial reasons, a financial institution enters into a debt restructuring, forgiveness or write-off arrangement with a customer, Revenue's approach, subject to being satisfied as to the bona fides of the arrangement is that, as the financial institution does not intend to make a gift of any sort to the mortgagor/debtor, the mortgagor/debtor would not be subject to a CAT charge in respect of any such debt restructuring, forgiveness or write-off arrangement.

This treatment will only apply in the above-mentioned circumstances. It will not apply where any debt restructuring, forgiveness or write-off arrangement is undertaken for the purposes of the avoidance of tax.

19.20 Debt relieved or reduced under the Personal Insolvency Act 2012

Section 82(1)(cb) provides that any benefit that may be obtained where a debt that is relieved or reduced under the terms of a Debt Relief Notice, a Debt Settlement Arrangement or a Personal Insolvency Arrangement in accordance with the Personal Insolvency Act 2012, is not to be taken to be a gift or inheritance for CAT purposes.