

Part 24 – Exemption relating to certain dwellings

1. Introduction

There is an exemption from Capital Acquisitions Tax (CAT) where residential properties (dwelling houses) are bequeathed by individuals who live there to successors who-

- have lived there for a specified period of time before the inheritance,
- will continue to live there for a specified period of time after the inheritance, and
- who have no beneficial interest in any other residential property at the date of the inheritance.

The exemption also applies to residential properties that are gifted to dependent relatives of a donor, i.e. individuals who are incapacitated to such an extent that they are unable to maintain themselves by earning an income from working or who are aged 65 or over.

Amendments made to the relief by Finance Act 2016 considerably narrowed its scope so that, with effect from 25 December 2016 the exemption no longer applies to gifts of dwelling houses unless the gift is made to a dependent relative of the donor. In addition, in the case of an inheritance, the exemption now applies only to the principal private residence of a disponent.

Finance Act 2016 did not make any arrangements to retain the exemption for people who may already have acquired a dwelling house for another person to live in less than three years before 25 December 2016 with the intention of gifting the house to that person three years later. (*See example 6.1 below*)

2. Legislation

The relevant provisions are contained in section 86 of the Capital Acquisitions Tax Consolidation Act 2003 which has undergone many changes since the relief was first introduced by Finance Act 1991. Finance Act 2000 significantly expanded the scope of the relief by turning it into a full exemption and extending it to gifts of dwelling houses and to all recipients. Finance Act 2016 (section 52) has significantly restricted the relief, particularly in relation to the ability to make tax-exempt gifts of dwelling houses and, in relation to inheritances, by restricting the exemption to the principal private residence of a disponent.

A “dwelling house” is defined as a building or part of a building which is suitable for use as a dwelling and includes grounds surrounding that building of up to 1

acre in area. The meaning of “successor” takes its meaning from the definition in section 2 CATCA 2003 (i.e. a person who takes an inheritance) but is further defined in section 86(1) to include a person who has inherited due to the early termination of a life interest under section 32(2). Section 86(9) defines “dependent relative”.

3. Qualifying Conditions

In summary, a dwelling house qualifies for the exemption where-

- it was occupied as the only or main residence of a disponent at the date of his or her death,
- it was occupied by a successor as his or her only or main residence for the 3 years preceding the date of the inheritance or, where the dwelling house for which the exemption is claimed replaced another dwelling house as the successor’s only or main residence, the combined period of occupation was at least 3 years falling within the 4 years preceding the date of the inheritance,
- it is the only dwelling house in which a successor has a beneficial interest at the date of the inheritance, and
- it transferred by way of an inheritance except in the case of-
 - a gift of a dwelling house to a “dependent relative” that does not have to be the sole or main residence of the disponent at the date of his or her death, or
 - a gift that becomes an inheritance when a disponent dies within two years of making the gift, as set out in section 3(1) CATCA 2003.

These conditions are described in detail in sections 3.1 to 3.4 below.

3.1 *Only or main residence*

A dwelling house must be the only or main residence of the disponent at the date of his or her death (section 86(2)(a)). The disponent is not explicitly required to have lived in the dwelling house for a specified period of time before his or her death (but see section 3.2 below).

The word “residence” is not defined and therefore has its normal meaning. This is a dwelling in which a person habitually lives and is his or her home. It follows that actual physical occupation of a dwelling house is necessary before it can be accepted that it is or was the person’s residence.

The words “only” and “main” also have their normal meaning. Where a person owns just one residence then this is where they will habitually live as an owner occupier. Where a person has multiple residences, the “main” residence will be the one in which the person habitually lives for the majority of his or her time. Only one residence can be the only or main residence at any one time i.e. the principal private residence.

An exception to the residency requirement is made where a disponent is absent from his or her only or main residence because of physical or mental ill health at the date of death; for example, if the person has moved into a nursing home. In this situation, the disponent is deemed to have lived in the dwelling house at that time (section 86(3)). (*see example 6.2 below*).

In the case of a gift of a dwelling house to a dependent relative, the dwelling house is not required to have been the only or main residence of the disponent.

The requirement for a dwelling house to have been a disponent’s principal private residence effectively means that each disponent can only bequeath a single qualifying house. This house can, however, be left to multiple successors who may each qualify for the exemption on their particular share of the inherited house if each of them has lived in that house for at least 3 years before the date of the inheritance.

3.2 *Prior occupation by the successor*

A successor must have lived in a dwelling house as his or her only or main residence for the 3 years immediately preceding the date of the inheritance (*see example 6.3 below*). Combined with the requirement for a disponent to have lived in the dwelling house as his or her only or main residence at the date of death, this means that, in effect, the disponent and successor will have lived together in the house for some or all of that 3-year period.

Where the dwelling house on which the exemption is claimed replaced another dwelling house within the 3-year prior occupation period then this requirement will be met as long as the combined period of occupation of both properties comprises at least 3 years out of the 4 years immediately preceding the date of the inheritance. Any property which has been replaced by the dwelling house on which the exemption is claimed must have been owned by the disponent for the occupation of that property to count towards the required 3 years.

As happens with a disponent, a successor who is absent from his or her principal private residence because of physical or mental ill health is deemed to have lived in the dwelling house at that time.

3.3 Only dwelling house in which the successor has a beneficial interest

A successor cannot claim the dwelling house exemption if he or she has an interest in another dwelling house at the date of the inheritance. Such an interest includes both full ownership and lesser interests and applies to dwelling houses situated either in the State or abroad. Even a part share in another dwelling house, however small the share, would make a successor ineligible for the exemption. This is the position irrespective of whether the successor already owned or had an interest in another dwelling before the date of the inheritance or acquired the interest as part of the same inheritance. (*see example 6.4 below*)

3.4 Gifts and dependent relatives

A gift of a dwelling house can qualify for the dwelling house exemption only if it is made to a dependent relative of the disponer. “Relative” is defined as a lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew of the disponer or the spouse or civil partner of the disponer.

A “dependent relative” is defined as a relative who is permanently and totally incapacitated due to mental or physical infirmity from maintaining himself or herself or who is of the age of 65 years or over at the date of the inheritance. Maintain in this context means to support oneself by earning an income from working. Total incapacity therefore means that an individual is not capable of earning a living from any kind of work. Also, the incapacity must be permanent i.e. there must be no prospect of the individual recovering or of the condition improving to the extent that the individual would become capable of maintaining himself or herself.

Incapacity in this context has quite a high threshold. A person who is visually impaired may qualify as permanently incapacitated but not necessarily as totally incapacitated or incapable of maintaining himself or herself by working.

Relatives who are not incapacitated can still qualify for the exemption if they are aged 65 years or over. (*see example 6.5 below*).

4. Withdrawal of exemption

A dwelling house will cease to be exempt where, within the period of 6 years beginning on the date of an inheritance, -

- it is sold or otherwise disposed of by a successor, or
- a successor ceases to occupy the dwelling house as his or her only or main residence.

If a dwelling house ceases to be exempt then tax is chargeable as if it had not qualified for the exemption at the date of the inheritance. The inheritance must

then be taken into account under the aggregation rules when computing tax on later gifts or inheritances within the same group threshold.

However, a sale, disposal or cessation of occupation does not result in the withdrawal of the exemption where-

- the full proceeds from a sale are re-invested in a replacement dwelling house that will then be the only or main residence of the successor. If less than the full proceeds are re-invested there will be clawback of the exemption proportional to the amount of the proceeds not re-invested in a replacement dwelling house (*see example 6.6 below*),
- the successor was 65 years of age or older on the date of the inheritance,
- the successor was required to reside somewhere other than the dwelling house because of his or her physical or mental infirmity. The infirmity must be certified by a doctor, or
- the successor was required by his or her employer to live somewhere else, whether in the State or abroad, in order to perform the duties of his or her employment (*see example 6.7 below*).

Where a person who was 55 years of age or older received a gift or inheritance of a dwelling house prior to 25 December 2016 and satisfied the other qualifying conditions for the exemption at that time, there will be no clawback of the exemption as a result of the age threshold being increased to 65 years by Finance Act 2016. Such persons can still do what they wish with the dwelling house after receiving it and still have no requirement to live there for the following 6 years provided the gift or inheritance was received before 25 December 2016.

5. Compliance

The exemption should be claimed on the IT38 return form by a successor/dependent relative as part of the normal self-assessment process. Revenue may however decide to examine the validity of a claim as part of its normal compliance programme. This may involve the person being required to provide evidence and supporting documentation to prove that he or she qualifies for the exemption. Such supporting documentation could include, for example:

- documents as evidence of living at a particular address
- a disclaimer of a benefit under a will or intestacy under section 12 CATCA 2003
- a doctor's letter stating the nature and extent of an individual's incapacity

- documents relating to the sale of a dwelling house and purchase of a replacement dwelling house
- proof of residing in a nursing home
- a letter from the successor's employer

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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6. Examples

- 6.1** Margaret purchased a dwelling house in February 2014 with the intention of gifting the house to her son James and availing of the dwelling house exemption once James' required 3-year period of occupation had expired. James sold an apartment where he had been previously living in March 2014 and has been living in the dwelling house owned by his mother since then. The changes to the exemption brought in by Finance Act 2016 mean that James will not qualify for the exemption if the dwelling house in question were to be gifted to him in March 2017 as was originally intended because he is not a dependant relative of his mother
- 6.2** Theresa inherits the family home in which she has lived all of her life from her father Pat. Theresa has no interest in any other dwelling houses and the house is the only residence of her father Pat. Due to ill health Pat was residing in a nursing home when he died. Theresa will qualify for the dwelling house exemption because Pat was absent from his only residence at the date of his death as a result of ill health and therefore the dwelling house is considered to be his principal private residence at the date of his death.
- 6.3** Emma inherits a house from her grandmother Ann. Emma has lived in the house with her grandmother for 3 years and 3 months prior to the date of the inheritance except for a period of 6 months when she had taken a career break and gone travelling in Australia. She will not qualify for the dwelling house exemption as she was not resident at the dwelling as her only or main residence for a period of 3 years prior to the date of the inheritance.
- 6.4** John inherits the family home from his father Michael. John has been living in the property along with his father for 6 years prior to the date of his inheritance. At the date of the inheritance he co-owns a modest holiday home along with his

three brothers. John will not qualify for the dwelling house exemption as he had an interest in another dwelling house at the date of the inheritance.

- 6.5** Anthony is gifted a dwelling house by his brother Andrew. Anthony has been living in the house for the previous 5 years and has no interest in another dwelling house. At the date of the gift he is 68 years of age. He will qualify for the dwelling house exemption as he is a dependent relative of the disponent Andrew due to his age. Had Anthony been 64 years of age at the date of the gift then he would not have qualified for the exemption.
- 6.6** Robert inherited a dwelling house from his sister Lorraine 3 years ago for which he qualified for the dwelling house exemption. He had utilised his full group B tax-free threshold for this inheritance. The dwelling house which was valued at €350,000 at the time of the inheritance was sold by Robert 8 months ago for €400,000. Robert purchased a replacement dwelling house for €320,000 meaning an amount of €80,000, a fifth of the sale proceeds, had not been re-invested in acquiring a replacement property. The dwelling house exemption will therefore be clawed back in relation to one-fifth of the value of the original inheritance. The CAT payable by Robert in this instance would be calculated as follows:

Taxable value	$€350,000 \times (\frac{€80,000}{€400,000})$ = €70,000
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CAT @ 33%	= €23,100
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- 6.7** Edel inherited a dwelling house from her mother Sandra four years ago for which she qualified for the dwelling house exemption. She is an engineer and has been informed by her employer that she is to be transferred to the Dubai office for a year to lead a new project. The dwelling house exemption will not be clawed back in this instance as Edel's temporary absence from the dwelling house within the required 6 year period post inheritance is as a result of an instruction from her employer so long as the property remains her only or main residence for the remainder of the 6-year period on her return from Dubai.