Guide to Capital Acquisitions Tax Interventions

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

1. Introduction

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1.1 What is CAT?

CAT is a tax on gifts and inheritances, that also applies to discretionary trusts where the settlor of the trust is deceased and there is no "principal objects" under the age of 21 years. Principal objects can be defined as the spouse of the disponer, children of the disponer or the children of a predeceased child of the disponer.

The Disponer is the person who provided the gift or inheritance.

The Beneficiary is the person entitled to the benefit, i.e. gift or inheritance.

Links below for further details -

Gift & Inheritance

Discretionary Trust Tax

This guide covers CAT on gifts and inheritances.

1.2 What property is liable to the tax?

Where, at the date of the disposition or the date of the gift or inheritance, either the disponer or the beneficiary is resident or ordinarily resident in Ireland, worldwide assets comprised in a gift or inheritance are liable to Irish CAT. If neither the disponer nor the beneficiary is resident or ordinarily resident in Ireland, at the relevant date, CAT will apply to Irish situate assets only.

Link below for further details on the territorial scope of CAT –

Taxation of Foreign Property

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1.3 Who is accountable for CAT?

FA 2010 introduced self-assessment for CAT.

The beneficiary is the taxable person and is accountable for filing the return and paying CAT on gifts and inheritances. CAT will arise where the value of the benefit taken exceeds that person's tax free threshold (Group Threshold).

A beneficiary is required to file a Form IT38 Gift/Inheritance tax return for all benefits valued within 80% of the relevant group threshold. The threshold depends on the relationship between the disponer and the beneficiary.

The group threshold is a lifetime amount, so it can be partially or fully eroded if the beneficiary has taken previous gifts or inheritances from the same Group Threshold. However, only prior benefits taken on or after 5 December 1991 from a disponer within the same group threshold as the current benefit should be included as prior aggregable benefits.

It is important to note that the Group Threshold amount and the rate of tax are those that apply on the date of the gift or inheritance. Details on the current and historic Group Threshold amounts, rates of tax and ascertaining the date of gift/inheritance are available at the links below:

Thresholds, Rates and Aggregation Rules

2. What exemptions/reliefs can be claimed?

The most frequently claimed exemptions/reliefs are:

- Dwelling House exemption
- Agricultural Relief
- Business Relief
- Favourite Nephew/Niece Relief
- Credit for Capital Gains Tax paid on the same event
- Double Taxation Relief
- Exemption of payments for support, maintenance and education.

2.1 Details of all reliefs and exemptions can be found in the links below:

Capital Acquisitions Tax (CAT) reliefs and Capital Acquisitions Tax (CAT) exemptions

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3. What is the Valuation Date?

The valuation date is an important principle for CAT. It is the date on which property comprised in a gift or inheritance must be valued. It is also the date on which qualification for Agricultural Relief, for example, is determined.

3.1 The Valuation Date also determines the relevant filing year for CAT self assessment returns.

Gifts and inheritances with a valuation date in the 12 month period ending on the previous 31 August will be included in the return to be filed by 31 October of that year. For example:

- where the valuation date falls between 1 September 2011 and 31 August 2012: File Form IT38 Gift/Inheritance tax return and pay tax by 31 October 2012
- where the valuation date falls between 1 September 2012 and 31 August 2013: File Form IT38 Gift/Inheritance tax return and pay tax by 31 October 2013

However, where the Valuation Date arises within the period of assessment 01/09/10 – 31/08/11, the filing date is the 30 September 2011.

Link for further details - CAT - Valuation Date

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4. CAT Interventions

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The Code of Practice for Revenue Audit and other Compliance Interventions applies to all CAT interventions.

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Details on Free Use of Property and interest free loans are available at the following link:

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Free use of property and interest free loans

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Unquoted Shares

Instructions on the valuation of unquoted shares are included in Part 21 of the CAT Manual, link below.

Part 21 Valuation of Unquoted Shares

"Private Company"

For CAT purposes, shares in "private companies" are valued at market value but where a donee owns a minority holding, that holding must be valued as a majority holding if, after the taking the benefit, his/her shares, when added to those of his/her relatives, as defined, constitutes a majority holding.

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Real Property - Under-Valuation & Surcharge

Where there is an identified substantial under-valuation of an asset, section 53 CATCA 2003 provides for the imposition of a surcharge. The surcharge is a specific percentage, depending on the degree of the under-valuation, (30%, 20% or 10%), of the tax ultimately attributable to the undervalued asset.

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Details of all reliefs and exemptions are provided in the link above in page 3.

5. Agricultural Relief

Sections 89 & 102A CATCA 2003

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Where the relief applies the market value of the agricultural property is reduced by 90%. "Agricultural Property" is defined in section 89 CATCA 2003.

Note –

- the beneficiary qualifies as a 'farmer' if on the valuation date the beneficiary's agricultural property comprises 80% of the beneficiary's total property at the valuation date
- the agricultural property for which the relief is being claimed must be agricultural property at both the date of the gift or inheritance AND at the valuation date. This means in the case of inheritances, that non agricultural assets cannot be converted into agricultural assets between the date of death and the valuation date
- cash or other non agricultural assets may be given by way of gift or inheritance subject to the condition that they are invested in agricultural property within two years of the date of the gift/inheritance. Agricultural Relief will apply to those assets, to the extent that they are invested in agricultural property within the time limits.
- where liabilities/costs/expenses are deductible, in line with the 90% reduction in the market value, the relevant deductions must also be reduced.

Some additional conditions were introduced in FA 2014. So for gifts and/or inheritances taken on or after 1 January 2015, where the valuation date also arises on or after 1 January 2015, the relief will be available only in respect of agricultural property gifted to or inherited by an individual who -

- subsequently uses the property for agricultural purposes for a period of not less than six years, or
- subsequently leases out the agricultural property for not less than six years for agricultural use.

The six year period runs from the valuation date.

Also,

- the beneficiary or lessee must have a recognised agricultural qualification, or

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- spend not less than 50 per cent of his or her normal working time farming agricultural property (including the agricultural property comprised in the gift or inheritance).

The agricultural property must be farmed on a commercial basis and with a view to the realisation of profits.

5.1 Can Agricultural Relief be fully or partially withdrawn if certain conditions are not met?

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The relief can be fully or partially withdrawn as follows:

- where the property, or part of the property, is disposed of, or, compulsorily acquired, within six years of the date of the gift or inheritance and is not replaced within one year of the disposal, or within six years of the compulsory acquisition, the relief is fully, or partially withdrawn.
- where the proceeds of the disposal are not **fully** used to acquire other agricultural property within the time limits, the relief is withdrawn on the amount of the proceeds not used for this purpose. **See Appendix 1, example 1** for a calculation of partial withdrawal of the relief.
- withdrawal of the relief does not apply to the sale of crops or timber or where the beneficiary dies before the disposal
- in the case of a gift or inheritance taken on or before 7 February 2012 the relief is withdrawn fully unless the individual in receipt of the relief is resident in the State for all of the three tax years immediately following the tax year in which the Valuation Date falls
- if, within a period of 6 years from the valuation date, any of the conditions governing the relief introduced in Finance Act 2014 cease to be satisfied.

If the agricultural property is disposed of by way of a gift and no monetary consideration passes, there will be no clawback.

Where the proceeds are used to acquire agricultural property that was transferred at any time by the beneficiary to his/her spouse or civil partner, such an acquisition is NOT treated as being an acquisition of other agricultural property for retention of the relief. This applies from 4 February 2010.

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5.2 Recalculation of the relief where property is disposed of for development between 6 and 10 years from the date of the gift or inheritance

Where "development land", that qualified for agricultural relief, is disposed of in whole or in part by the beneficiary, in the period commencing 6 years after the date of the gift or inheritance and ending 10 years after that date, the relief granted will be clawed back in respect of the development value of that land at the valuation date. In contrast to the clawback under section 89, this clawback applies where there are no proceeds, e.g. disposal is by way of gift.

See Appendix 1, example 2

Link for further details:

Capital Acquisitions Tax Manual - Part 11 - Agricultural Relief

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6. Business Relief

Sections 90 - 102A CATCA 2003

The taxable value of a gift or inheritance can be reduced by 90% when business relief conditions are satisfied. It may happen that tax is still payable after granting this relief.

The relief is only given in respect of "relevant business property".

"Relevant Business Property" is defined in section 93 CATCA 2003 and includes:

- a business or an interest in a business (sole traders, partnerships),
- unquoted shares in or securities of a company provided that the beneficiary, on the valuation date and after taking the benefit, either:
  - controls the company within the meaning of section 27 CATCA 2003, or
  - owns more than 25 per cent of the voting rights relating to all questions affecting the company as a whole, or
  - owns at least 10 per cent of the nominal value of the issued share capital where the beneficiary is employed by the company throughout the period of 5 years ending on the date of the gift or inheritance.

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- land, buildings, plant and machinery owned by the disponer and used in the business, when taken at the same time as the business, and
- certain quoted shares, in limited circumstances.

6.1 Conditions attached to the relief:

- the business must be trading
- the relief will not apply to businesses based wholly or mainly on making or holding investments
- minimum period of ownership of property
  - where an inheritance is taken on the death of the disponer, a period of 2 years immediately prior to the date of the inheritance, or
  - in any other case, a period of 5 years immediately prior to the date of the gift/inheritance.
- new business property, acquired during the relevant minimum ownership period, is excluded from the relief. However, the acquisition of business property to replace the existing business property may qualify, subject to the relevant minimum ownership period. The relief available is not to exceed the relief available had the replacement not occurred. There is no requirement that the replacement property be of a similar nature to the property replaced. Further details are available in Part 12 – CAT Manual under "Replacement Property" (Section 95). See the link below.
- assets not used wholly or mainly for the purposes of the business are excluded from the relief, e.g. a flat over a shop let out for market rent.
- holding companies will qualify for the relief provided they are wholly or mainly holding companies for qualifying subsidiary or associated businesses. Any subsidiary or associated company that does not qualify is ignored in establishing the value of the holding company.

"Wholly or mainly" is not defined in the Act. Further details are available in the:

CAT Tax & Duty Manual Part 12 'Wholly or Mainly' Test

6.2 Clawback of the Relief

Where the property

- is sold within 6 years of the date of the gift or inheritance, the relief will be clawed back, unless the business sold is replaced within a year by other relevant business property, or
- is sold in whole or in part between 6 and 10 years of the date of the gift or inheritance, the relief granted will be clawed back in respect of the development value of that land at the valuation date of the gift or

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inheritance. This claw back is similar to that which applies to Agricultural Relief. Example 2 in Appendix 1 has the same application for Business Relief property.

Link for further details - CAT Tax & Duty Manual Part 12

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7. Favourite Nephew/Niece Relief

Paragraphs 6 & 7, Schedule 2 CATCA 2003

The legislation provides that where certain conditions are satisfied a nephew or niece of the disponer (who is a child of the disponer's brother or sister, or is a child of the civil partner of the disponer's brother or sister) will be treated for purposes of the group threshold as if a child of the disponer.

7.1 The donee/successor:

- must be a child of a brother or sister of the disponer or a child of the civil partner of the disponer's brother or sister. A nephew-in-law or niece-in-law or the niece or nephew of a spouse does not qualify. However the surviving spouse or civil partner of a deceased nephew or niece may qualify for the relief – Schedule 2, paragraph 6 CATCA 2003 refers.
- must have worked substantially on a full time basis for a period of 5 years ending with the disposition -
  - for the disponer in the disponer's trade/ profession/ business, or
  - where the gift/inheritance consists of shares in the company, in assisting in the carrying on of the trade/ profession/ business of the company.

7.2 The property must be:

- property which was used in connection with the trade, profession or business of the disponer.
- if the property is shares, the company must be a private trading company, controlled by the disponer. "control" for this purpose has a specific, restrictive definition – section 27(b) CATCA 2003.

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8. Dwelling-House Exemption

Section 86 CATCA 2003

Where a beneficiary receives an inheritance of a dwelling-house and Dwelling-House Exemption is claimed, certain conditions must be satisfied –

- The dwelling house must have been the principal private residence of the disponer at his or her date of death
- the beneficiary must have continuously occupied the dwelling-house as his or her only or main residence for at least 3 years immediately prior to the date of the inheritance
- the beneficiary must continue to occupy the dwelling-house as his or her only or main residence for 6 years after the date of the inheritance. This applies unless:-
    - the beneficiary is aged over 65 or
    - needs long term medical care or
    - is residing elsewhere as a condition of his/her employment
- the beneficiary must not, at the date of the inheritance, own or have an interest in any other dwelling-house

Gifts of dwelling houses to dependent relatives of a disponer may also qualify for the exemption. A dependent relative is a direct relative of the disponer, or of the disponer’s spouse or civil partner, who is permanently and totally incapacitated because of a physical or mental infirmity from maintaining himself or herself or who is over the age of 65.

Where a gift of a dwelling house qualifies for the exemption, the dwelling house does not have to have been the principal private residence of the disponer.

The exemption will not apply where the property is sold within the 6 year period and all of the proceeds are not reinvested in a replacement dwelling-house.

Provision is made for a situation where the beneficiary takes the original dwelling-house, qualifies for exemption, then sells the house and acquires another dwelling-house as an only or main residence within the relevant period.

Provided the cost of the replacement dwelling house is at least equal to the amount of the proceeds of sale of the original house, then the entitlement to the exemption is preserved.

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If the replacement dwelling house costs less than the original dwelling house then the amount not re-invested is taxable.

EXAMPLE:

Adam by his will bequeathed a house to Brendan. At the date of the inheritance the house was valued at €800,000. Two years later Brendan sold the house for €1,000,000 and re-invested €700,000.

As 30% of the sale proceeds have not been re-invested, 30% of the original exemption (€800,000) is now withdrawn (€240,000) and CAT is due on this amount.

Link for further details - **Dwelling House Exemption**

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9. Credit for Capital Gains Tax paid on the same event

Section 104 CATCA 2003

Where both capital gains tax and capital acquisition tax are chargeable on the same property in connection with the same event the capital gains tax paid is allowable as a credit against the capital acquisition tax payable.

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10. Double Taxation Relief

Sections 106 &107 CATCA 2003

Irish law provides relief from double taxation in the context of CAT.

Presently there are double taxation relief treaties between Ireland and the UK for both inheritances and gifts and between Ireland and the USA for inheritances only.

10.1 Double Taxation Relief

There are two main methods by which double taxation can be relieved under a Treaty. These are the credit method, which shares the tax yield between the two States involved, and, the exemption method, which involves the renunciation of the right to tax by one State.

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- **Credit method**: Under the credit method of relief, both countries impose tax under their domestic law. The normal criterion for taxation of property is situs and the country with situs generally has the primary claim for tax. Accordingly, the country that claims tax for some other reason, for example by reason of residence or domicile, will normally give credit for the tax payable in the country of situs.

- **Exemption method:** Where the exemption method of relief is used, the country of residence or domicile is generally given priority. The country of situs or non-domicile normally surrenders its right to tax the particular asset.

10.2 Unilateral Relief

Unilateral relief is provided for by Section 107 CATCA 2003, to cater for situations of double taxation where there is no Treaty with the other State also imposing tax. Relief from double taxation arising in respect of gifts between the jurisdictions of Ireland and the USA must be obtained under these provisions, if possible.

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11. Exemption in respect of payments for support, maintenance and education

Section 82 CATCA 2003

Section 82 CATCA 2003 exempts from CAT money or money's worth given by an individual ("the disponer") during his or her lifetime for the support, maintenance or education of:

- his or her children
- his or her civil partner's children
- a person in relation to whom s/he stands in loco parentis, or
- payments for the support or maintenance of a dependent relative under section 466 TCA 1997.

Limitations on the exemption were introduced by section 81 FA 2014. Accordingly, for such payments made on and from 23 December 2014 the relief will only apply where the child is -

- a minor child of the disponer or of the civil partner of the disponer, or

- a child of the disponer, or of the civil partner of the disponer, who is more than 18 years of age but not more than 25 years of age who is receiving full-

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time education or instruction at any university, college, school or other educational establishment, or

- a child of the disponer or of the civil partner of the disponer who, regardless of age, is permanently incapacitated by reason of physical or mental infirmity from maintaining himself or herself.

Link for further details - CAT Treatment of Receipts by Children.pdf

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12. Summary

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Appendix 1

Example 1: Agricultural Relief Clawback.

Partial clawback of the relief where the full proceeds of sale are not used to acquire other Agricultural Property within one year.

Arthur inherited a farm from his uncle Bernard on 01/02/2011. The value of the farm on the valuation date is €1,000,000. On 01/04/2014 Arthur sold this farm for €1,800,000 and reinvested part of the proceeds in the purchase of a new farm for €1,400,000. Remember, the entire proceeds MUST be re-invested to retain full relief. Note that the amount of €400,000 was not reinvested, so the original agricultural relief is adjusted in accordance with the formula:

V1 X N
V2

V1 is the full value of the inheritance on the valuation date - €1,000,000
V2 is the market value of the inherited agricultural property at the date of the disposal - €1,800,000

N is the amount of the consideration not reinvested - €400,000.

Therefore, the amount of the original benefit which is treated as not being agricultural property anymore is:

1,000,000 X 400,000
1,800,000 = 222,222

The original liability was as follows

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Market value of benefit	1,000,000
Less agricultural relief	900,000
Taxable value	100,000
Group B threshold 2011	33,208
Chargeable benefit	66,792
Tax due at 25%	16,698

The revised liability after withdrawal of agricultural relief is as follows:

Market value of non agricultural property	222,222
Market value of agricultural property	777,778
Less agricultural relief	700,000
Taxable value of agricultural property	77,778
Total benefit (222,222 + 77,778)	300,000
Group B Threshold 2011	33,208
Chargeable benefit	266,792
Tax due at 25%*	66,698

*Threshold amount and rates are those that apply on the date of the Inheritance – 2011.

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Appendix 1

Example 2: Agricultural Relief Clawback in respect of Development Land.

Recalculation of tax where Agricultural Relief claimed and property disposed of, between 6 and 10 years of the date of the gift or inheritance, includes Development Land.

Adam died in June 2006 and left a farm valued at €3,000,000 to his nephew, Brendan. The farm assets included land valued €2,000,000. On 05/04/2014 the land was sold for €15,000,000 to a builder for development.

Even though no planning permission existed in 2006 at the date of Adam's death, the land at that time had development potential and should have been valued at its "market value". The market value at June 2006 is agreed as €7,000,000.

The original CAT liability was based on "current value" of the land at €2,000,000 and must now be revised to its "market value". As the land has been sold in the period of 7 to 10 years after the date of the gift or inheritance the relief originally given is to be clawed back in respect of the "development value".

The original liability was returned as:

Value of benefit	3,000,000
Less agricultural relief 90%	2,700,000
Taxable benefit	300,000
Group B threshold for 2006	47,815
Taxable	252,185
Tax due at 20%	50,437

The revised liability is as follows:

Value of farm assets other than land	1,000,000
Value of land – restricted to current use	2,000,000
Total qualifying for Agricultural relief	3,000,000
Agricultural property relief 90%	2,700,000
Taxable benefit `	300,000
Add claw back in respect of development value of land	
(Market value – current use value (7,000,000 – 2,000,000)	5,000,000
Total taxable benefits	5,300,000
Group B threshold for 2006 *	47,815
Taxable	5,252,185
Tax due at 20% *	1,050,437

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*rates and thresholds to be used are those at the date of the original gift or inheritance.

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