Reporting requirement in relation to gifts in respect of certain loans

Capital Acquisitions Tax Manual Part 26

This document should be read in conjunction with sections 40 and 46 of the Capital Acquisitions Tax Consolidation Act 2003.

Document last updated January 2025.

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.

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26.1 Introduction

Section 40 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) provides that where a person has, in a given year, the benefit of the use, occupation or enjoyment of property for less than full consideration, the person is deemed to take a gift for Capital Acquisitions Tax (CAT) purposes in that year. In the context of a loan of money, a person will be deemed to take a gift in respect of that loan if they have not paid full consideration for the benefit of the loan.

Where a person is deemed to take a gift in respect of a loan, they may be required to report information in relation to it in a CAT IT38 return. Section 46(4A) CATCA 2003 provides the statutory basis for this reporting requirement. The provision was introduced by the Finance (No. 2) Act 2023 and came into effect on 1 January 2024 for gifts in respect of certain interest-free loans. Finance Act 2024 extended the reporting requirement to include certain low-interest loans with effect from 1 January 2025.

The purpose of this document is to set out guidance on the circumstances in which such a reporting requirement will arise.

26.2 Loans within scope of reporting requirement

For the year 2025 and each subsequent year, a reporting requirement[1] will arise where, in that year:

- a person is **deemed to take a gift** in accordance with section 40(2) CATCA 2003 (see 26.2.1) in respect of a **specified loan** (see 26.3), and
- the balance outstanding on the specified loan, when aggregated with the balance outstanding on any other specified loan, exceeds €335,000 on at least one day in the year.[2]

For the year 2024 only, a reporting requirement will arise where, in that year:

- a person is **deemed to take a gift** in accordance with section 40(2) CATCA 2003 (see 26.2.1) in respect of a **specified loan** (see 26.3),
- no interest is paid in respect of the specified loan (either in 2024 or within 6 months of the end of that year, and
- the balance outstanding on the specified loan, when aggregated with the balance outstanding on any other specified loan, exceeds €335,000 on at least one day in the year.[3]

[1] Section 46(4)(ab) CATCA 2003.
[2] Section 46(4A)(b) CATCA 2003 (as amended by Finance Act 2024).
[3] Section 46(4A)(b) CATCA 2003 (as it read prior to Finance Act 2024 amendment).

Examples illustrating the circumstances in which a reporting requirement arises are set out in Appendix I.

26.2.1 Deemed gifts

Section 40(2) CATCA 2003 provides that where a person has the benefit of the use, occupation or enjoyment of property without providing full consideration for that free use, occupation or enjoyment, the person is deemed to take a gift in each year that they have such benefit.

In accordance with section 40(3) CATCA 2003, the gift consists of the difference between any consideration paid by the person for the use, occupation or enjoyment of the property and the best price in the open market for such use, occupation or enjoyment of the property.

In the context of a loan, a person will be deemed to take a gift in respect of that loan if they have not paid full consideration for the benefit of the loan, for example, where no interest is paid on the loan or interest is paid but at a below-the-market rate. For CAT purposes, the gift is the interest-free element of the loan, rather than the loan itself. Where a loan is interest-free, the person will take a gift of an amount equal to the best price obtainable for use of the loan capital. If interest is paid but at a below market rate, the person will take a gift equal to the difference between the interest paid and the best price obtainable for use of the loan capital. In practice, Revenue accepts the highest rate of return the person making the loan could obtain on investing the funds on deposit as the best price obtainable for use of the loan capital.[4]

26.2.1.1 Loan made to or by a company

Section 43 CATCA 2003 sets out the treatment that is to apply in respect of a disposition by or to a company, where the term **company** is defined as *"a private company within the meaning of section 27".* In section 27 CATCA 2003, the term **private company** refers to a company that is under the control of not more than 5 persons unless at least 35% of the voting power is held by the public and the company is quoted on the official list of a recognised stock exchange.
Section 43(2)(b) CATCA 2003 provides that where a company takes a gift or an inheritance, the gift or inheritance is deemed to be taken by:

- the beneficial owners of the company, and

[4] See paragraph 19.11 in Tax and Duty Manual CAT Part 19

- the beneficial owners of the entitlements under any liability incurred by the company (otherwise than for the purposes of the business of the company, wholly and exclusively).

This is commonly known as "looking through the company" to ascertain the ultimate beneficiaries of the gift.

Accordingly, where a deemed gift arises under section 40(2) CATCA 2003 in respect of a loan taken by a company, the beneficial owners of the company are deemed to take a gift in respect of the loan in proportion to their beneficial interest in the company.

Similarly, section 43(2)(a) CATCA 2003 provides that where a disposition is made by a company, the disponer is deemed to be:

- the beneficial owners of the company, and

- the beneficial owners of the entitlements under any liability incurred by the company (otherwise than for the purposes of the business of the company, wholly and exclusively).

26.3 Specified loans

The term **loan** is specifically defined for the purposes of section 46(4A) CATCA 2003 and means "*any loan, advance or any form of credit*".[5]

The term **specified loan** is defined by reference to the relationship that exists between the parties to a loan.

There are four separate categories of loans that are specified loans for the purposes of the reporting requirement, as follows:

- a loan to a person by a **close relative** of that person;

- a loan by a company to a person where a **beneficial owner** of the company is a close relative of that person;

- a loan to a company where a person is a beneficial owner of that company and the person making the loan is a close relative of the person;

- a loan by a company to another company where a person is a beneficial owner of the borrowing company and any beneficial owner of the lending company is a close relative of the person.

The term **close relative**, in relation to a person, refers to:

[5] Section 46(4A)(a) CATCA 2003.

- a parent of the person,
- a lineal ancestor of the person,
- a lineal descendant of the person,
- a brother or sister of the person,
- a brother or sister of a parent of the person, or
- a brother or sister of the civil partner of a parent of the person.

The term **beneficial owner** refers to any person that is a beneficial owner of:

- the shares in the company, or
- the entitlements under any liability incurred by the company (otherwise than for the purposes of the business of the company, wholly and exclusively).

In addition, section 46(4A)(c)(i) CATCA 2003 provides that where a company is a beneficial owner of another company, any beneficial owners of the parent company are deemed to be beneficial owners of the subsidiary company for the purposes of the reporting requirements.

Where the shares or entitlements of a company are held in trust and have no ascertainable beneficial owners, section 46(4A)(c)(ii) CATCA 2003 provides that:

- any loan made by the company is deemed to have been made by the disponer who placed the assets held by the company in trust, and
- any loan made to the company is deemed to be made to the beneficiaries of the trust.

Examples to illustrate the application of these provisions, in particular the meaning of the terms close relative and beneficial owner, are set out in Appendix II.

26.4 Information to be provided in CAT IT38 return

Where a person is required to file a CAT IT38 return in relation to a gift in respect of a specified loan, the information to be provided in the return is to include:

- the name, address and tax reference number of the person who gave the loan,
- the balance outstanding on the loan, and

- the market value of the free use of the loan.

26.5 Due date for filing CAT IT38 return

The latest date by which a CAT IT38 return must be filed, and any CAT liability paid, is determined by reference to the valuation date of the gift. All gifts and inheritances with a valuation date in the 12-month period ending on the 31 August of a year are required to be returned by 31 October of that year. Where the valuation date is after 31 August, the latest date for filing the CAT IT38 return is 31 October of the following year.

Examples:

- valuation date 20 March 2024: File return and pay CAT by 31 October 2024;

- valuation date 31 December 2024: File return and pay CAT by 31 October 2025.

In general, the valuation date of a gift is the date of the gift. Section 40(4) CATCA 2003 provides that a deemed gift in respect of the free use, occupation or enjoyment of property is treated as being taken at the end of each calendar year. However, if the use, occupation or enjoyment of the property comes to an end before the end of the calendar year, the gift will be treated as having been taken immediately prior to that time.

Therefore, where a person has, in a particular year, the free use or enjoyment of money by way of a loan for less than full consideration, the person is deemed to take a gift on the 31 December of that year, and in every year thereafter where the loan remains outstanding. The valuation date of the deemed gift is 31 December in each year the person has the free use or enjoyment of the loan funds.

Where the loan is repaid in full during a calendar year the valuation date of the gift in that year will be the day before the loan is repaid in full. For example, where a loan is repaid on 1 August, the valuation date is 31 July.

In respect of the year 2024, a specified loan is not reportable to Revenue where interest is paid on the loan, either in the year in which the gift in respect of the loan is taken or within 6 months of the end of that year. Reflecting this, Revenue accepts that the reporting requirement in relation to a specified loan that is discharged in full on or before 31 August 2024 , can be deferred to 31 October 2025.

Appendix I

Illustrative examples – where reporting requirements apply

Example 1

Joan receives a loan of €500,000 from her uncle on 1 January 2025. Joan pays interest on the loan at a rate of 1%. The loan is still outstanding on 31 January 2026.

The highest rate of return that Joan's uncle could obtain from investing the loan capital on deposit is 2% per annum. Therefore, Joan is deemed under section 40(2) to have taken a gift in respect of the free use of the loan capital on 31 December 2025. Joan has not received any other gifts or inheritances under the Group B Threshold.

Joan's obligations in respect of the CAT year of assessment 01/09/2025 – 31/08/2026 are as follows.

The taxable value of the deemed gift is ascertained on the valuation date 31 December 2025 as follows:

Loan value		€500,000
Multiply by highest rate of return		2%
Taxable value of the deemed gift:		
(€500,000 @ 2%)	€10,000	
Less interest paid (€500,000 @ 1%)	(€5,000)	
Taxable value of the deemed gift		€5,000
Less small gift exemption		(€3,000)
Net taxable value of the deemed gift		€2,000
Less Group threshold		(€40,000)
Taxable excess		0
CAT payable @ 33%		Nil
Remaining Group threshold		€38,000

Joan will be required to file a CAT IT38 return by 31 October 2026 in respect of the deemed gift of €5,000 in the CAT year of assessment 01/09/2025 – 31/09/2026 because:

- the loan to Joan is a specified loan (it was received from her uncle),
- the balance of the "specified loan" exceeds €335,000 on at least one day during the year.

Example 2

Susan receives a loan of €400,000 from her mother on 1 January 2023 at a nil rate of interest. Part of the loan is still outstanding on 31 January 2025.

Susan is deemed under section 40(2) to have taken gifts in respect of the free use of the loan capital on 31 December 2023 and on 31 December 2024. The highest rate of return that Susan's mother could realise from investing the loan capital on deposit is 2% per annum. Susan has not received any other gifts or inheritances under the Group A Threshold.

Susan's obligations in respect of the CAT year of assessment 01/09/2023 – 31/08/2024 are:

The taxable value of the deemed gift is ascertained on the valuation date 31 December 2023 as follows:

Loan value		€400,000
Multiply by highest rate of return		2%
Taxable value of the deemed gift:	(€400,000 @ 2%)	€8,000
Less small gift exemption		(€3,000)
Net taxable value of the deemed gift		€5,000
Less Group threshold		(€335,000)
Taxable excess		0
CAT payable @ 33%		Nil
Remaining Group threshold		€330,000

Susan is not required to file a CAT IT38 return for the CAT year of assessment 01/09/2023 – 31/08/2024 as the deemed gift, when aggregated with any prior benefits received under Group Threshold A, does not exceed 80% of Group Threshold A. The new reporting requirements in relation to specified loans came into effect on 1 January 2024 and do not apply to the gift Susan is deemed to take on 31 December 2023.

Susan's obligations in respect of the CAT year of assessment 01/09/2024 – 31/08/2025 are:

The taxable value of the deemed gift is ascertained on the valuation date 31 December 2024 is as follows:

Loan value[6]	€395,000

[6] Assume €5,000 has been repaid off the loan at this time.

Multiply by highest rate of return		2%
Taxable value of the deemed gift:	(€395,000 @ 2%)	€7,900
Less small gift exemption		(€3,000)
Net taxable value of the deemed gift		€4,900
Less remaining Group threshold (€400,000 less €5,000)		(€395,000)
Taxable excess		0
CAT payable @ 33%		Nil
Remaining Group threshold		€390,100

The deemed gift, when aggregated with prior benefits received under Group Threshold A, does not exceed 80% of Group Threshold A.

However, Susan will be required to file a CAT IT38 return by the 31 October 2025 in respect of the deemed gift of €7,900 in the CAT year of assessment 01/09/2024 – 31/09/2025 because:

- the loan to Susan is a specified loan (it was received from her mother),
- the balance of the "specified loan" exceeds €335,000 on at least one day during the year.

and,

- no interest was paid in respect of the specified loan within 6 months of the end of the year of the gift. *(this condition is applicable in the year 2024 only)

Example 3

Gary receives a loan of €350,000 from ABC Ltd on 1 January 2024 at a nil rate of interest. Gary's grandfather Alan is the sole shareholder of ABC Ltd. Gary repays the loan in full on the 10 March 2024.

Gary is deemed under sections 40(2) and 43(2)(a) to have taken a gift from his grandfather Alan during 2024 in respect of the free use of the loan capital. The valuation date of the deemed gift is the 9 March 2024. The highest rate of return that could have been realised from investing the loan capital on deposit is 2% per annum.

Gary has not received any prior gifts or inheritances under Group Threshold B. The taxable value of the deemed gift is ascertained on the valuation date being the 9 March 2024 is as follows:

Loan value	€350,000

Multiply by highest rate of return		2%
Taxable value of the deemed gift for the period 1 Jan 2024 – 9 Mar 2024		
(€350,000 @ 2%)	€7,000 / 366 days * 68 days =	€1,300
Less small gift exemption		(€3,000)
Net taxable value of the deemed gift		Nil
CAT payable @ 33%		Nil
Remaining Group threshold		€32,500

Although the loan has been repaid, Gary will be required to file a CAT IT38 return by 31 October 2025 in respect of the deemed gift of €1,300 in the CAT year of assessment 01/09/2023 – 31/08/2024 because:

- the loan to Gary is a specified loan (his grandfather is the beneficial owner of ABC Ltd),

- the balance of the specified loan exceeds €335,000 on at least one day during the year,

- no interest is paid in respect of the specified loan within 6 months of the end of the year of the gift *(this condition is applicable in the year 2024 only), and

- Revenue accepts that the reporting requirement in relation to a specified loan that is discharged in full on or before 31 August in a particular year can be deferred to 31 October in the following year.

Appendix II

Illustrative examples – specified loans

Example 1 - A loan to a person by a close relative of that person

Ciara receives an interest-free loan of €400,000 from her mother, Deirdre, on 2 February 2024.

Deirdre, being Ciara's mother, is a "close relative" of Ciara as defined in section 46(4A)(a) CATCA 2003.

The loan by Deirdre to Ciara is therefore a "specified loan" as defined in section 46(4A)(a) CATCA 2003 as it is a loan to Ciara from her close relative.

Example 2 – A loan by a company to a person where a beneficial owner of the company is a close relative of that person

Daniel receives a low-interest loan of €500,000 from ABC Ltd on 4 May 2024.

Daniel's sisters Anne and Emer are the 100% shareholders of ABC Ltd.

Anne and Emer are "beneficial owners" of ABC Ltd, as defined in section 46(4A)(a). Anne and Emer, being Daniel's sisters, are both "close relatives" of Daniel as defined in section 46(4A)(a).

The loan by ABC Ltd to Daniel is therefore a "specified loan" because it is a loan to Daniel by a company, and a close relative of Daniel is a beneficial owner of that company.

Example 3 – A loan to a company, where the person is a beneficial owner of that company and the person making the loan is a close relative of that person

XYZ Ltd receives an interest-free loan from Claire on the 15 April 2024. Claire's nephew Frank has a 50% shareholding in XYZ Ltd. Frank and the other beneficial owners of XYZ Ltd are deemed to have taken a gift from Claire in respect of the free use of the loan. (section 43(2) CATCA 2003).

Claire is a sister of Frank's parent and is therefore a "close relative" of Frank as defined in section 46(4A)(a).

Frank is a "beneficial owner" of XYZ Ltd, as defined in section 46(4A)(a) CATCA 2003.

The loan is a "specified loan" because it is loan to a company (XYZ Ltd) by a person (Claire) who is a close relative of a beneficial owner of that company (Frank).

Example 4 – Loan made by a company to another company, where a beneficial owner of the lending company is a close relative of a beneficial owner of the borrowing company.

Red Ltd receives an interest-free loan of €1,000,000 from ABC Limited on the 8 February 2024. Nicola, who holds 100% of the shares in ABC Limited, is the grandmother of Rachel. Rachel holds a 50% shareholding in Red Limited. Rachel and the other beneficial owners of Red Ltd are deemed to have taken a gift from the beneficial owners of ABC Ltd (section 43(2)).

Nicola is a "close relative" of Rachel as defined in section 46(4A)(a) as she is Rachel's grandmother (a lineal ancestor).

Nicola and Rachel are "beneficial owners" of ABC Limited and Red Limited, respectively.

The loan by ABC Limited to Red Limited is therefore a "specified loan" as it is a loan to a company (Red Limited) by a company (ABC Limited), and a beneficial owner of the lending company (Nicola) is a close relative of a beneficial owner of the borrowing company (Rachel).

Example 5: Loan made <u>to</u> a company whose shares and entitlements are held in trust

Yellow Limited receives a low-interest loan of €2,000,000 from Mary. Yellow Limited is owned by a trust that was set up by Mary in 2013. Mary's nieces Patricia and Sally are the beneficiaries of the trust.

For the purposes of the reporting requirements, the loan to Yellow Limited is deemed to have been made by Mary to the beneficiaries of the trust, Patricia and Sally. (section 46(4A)(c)(ii) CATCA 2003).

Mary is a "close relative" of Patricia and Sally as defined in section 46(4A)(a) as Mary is their aunt (a sister of their parent).

The loan by Mary to Yellow Limited is therefore a "specified loan" as defined in section 46(4A)(a) as it is a loan to a person by a close relative of that person.

Example 6: Loan made <u>by</u> a company whose shares and entitlements are held in trust

Ben receives an interest-free loan of €800,000 from Red Limited. Red Limited is owned by a trust that was set up by Ben's mother Tina in 2005.

For the purposes of the reporting requirements, the loan is deemed to have been made by Tina to Ben. (section 46(4A)(c)(ii) CATCA 2003).

Tina is a “close relative” of Ben as defined in section 46(4A)(a) as Tina is Ben’s parent.

The loan by Red Limited to Ben is therefore a “specified loan” as it is a loan to Ben by his close relative.