CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

(as amended by subsequent Acts up to and including the Finance Act 2015)

NOTES FOR GUIDANCE 2015

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These notes are for guidance only and do not purport to be a definitive legal interpretation of the provisions of the Capital Acquisitions Tax Consolidation Act 2003 (as amended by subsequent Acts up to and including the Finance Act 2015).

INTRODUCTION

The object of these notes is to provide a comprehensive section-by-section commentary on all provisions of the Capital Acquisitions Tax Consolidation Act 2003 (as amended by subsequent Acts up to and including the Finance Act 2015).

These notes contain:

- an overview of the Capital Acquisitions Tax Consolidation Act 2003 (as amended by subsequent Acts up to and including the Finance Act 2015);
- a brief overview of the provisions of each Part of the Act;
- a commentary on every section in each Part of the Act. The commentary is in 2 parts – a brief summary of the section is given first (but this is dispensed with where a section is short or straightforward). This is followed by a more detailed description of the provisions and effects of the section. References in the right hand margin of each page are references to the subsection (and the paragraph and subparagraph, etc.) of the section being read. References within the commentary to other sections etc. are, unless otherwise stated, references to other sections etc. of the Act. Examples are included to illustrate how particular provisions work.

In addition to the various provisions contained in the Capital Acquisitions Tax Consolidation Act 2003 (as amended by subsequent Acts up to and including the Finance Act 2015 other legislation also impacts on capital acquisitions tax. Readers should be aware, in particular, of the provisions contained in sections 7, 8, 811, 858, 872(1), 887, 905, 910, 912, 1002, 1003, 1006, 1077E, 1078, 1079, 1086 and 1093 and Part 34 of the Taxes Consolidation Act 1997.

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OVERVIEW OF CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

Capital acquisitions tax was introduced in the Capital Acquisitions Tax Act 1976. Capital acquisitions tax, which consists of a tax on gifts and inheritances, replaced the system of death duties which had been in existence for over a century. Capital acquisitions tax applies to gifts taken on or after 28 February 1974 and to inheritances taken on or after 1 April 1975. The tax became a self-assessment tax in 1989.

The Finance Act 1984 introduced a once-off inheritance tax charge on certain property subject to a discretionary trust on 25 January 1984 or becoming subject to a discretionary trust on or after that date. The Finance Act 1986 introduced an annual inheritance tax charge on certain property subject to a discretionary trust commencing with the year 1986.

A probate tax was imposed on estates of deceased persons in the Finance Act 1993, but that tax was abolished in the Finance Act 2001.

The Capital Acquisitions Tax Consolidation Act 2003 is divided into 12 Parts as follows:

- ***Part 1*** consists of definitions and rules of construction. It also contains the short title of the Act.

- ***Part 2*** contains the charging section for gifts and other provisions relating to gifts.

- ***Part 3*** contains the charging section for inheritances and other general provisions relating to inheritances. It also contains provisions dealing with the initial 6% charge imposed on certain discretionary trusts and the subsequent annual 1% charge imposed on such trusts.

- ***Part 4*** sets out how property is to be valued for capital acquisitions tax purposes.

- ***Part 5*** contains general provisions relating to gifts and inheritances.

- ***Part 6*** contains provisions dealing with returns and assessments.

- ***Part 7*** contains provisions dealing with payment of tax, interest and penalties.

- ***Part 8*** contains provisions dealing with appeals.

- ***Part 9*** contains the exemptions from gift and inheritance tax.

- ***Part 10*** contains the various reliefs, i.e. agricultural relief, business relief and other miscellaneous reliefs.

- ***Part 11*** contains miscellaneous provisions relating to capital acquisitions tax.

- ***Part 12*** contains provisions relating to repeals, the commencement of the Act and transitional provisions.

CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

PART 1 PRELIMINARY

Overview

This Part contains the short title of the Act, defines certain terms and sets out rules for the construction of certain references used in the Capital Acquisitions Tax Consolidation Act 2003.

1 Short title

This section contains the short title of this Act.

2 General interpretation

This section provides for the interpretation of terms and expressions used in the Capital Acquisitions Tax Consolidation Act 2003. The various definitions apply unless the context requires otherwise. Readers should also be aware that section 18 of the Interpretation Act 2005 contains general rules for the construction of statutes which apply unless the contrary intention appears. **(1)**

The definitions of "accountable person", "benefit", "child", "Collector", "Commissioners", "donor", "donee," "gift", "inheritance", "market value", "minor child", "personal property", "personal representative", "property", "real property", "regulations", "relative", "return", "share", "successor", "tax", "valuation date" and "year of assessment" are self-explanatory. Definitions are also included for the purposes of the amendments to the Act by the Finance (No. 3) Act 2011 following the enactment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, e.g. "child of the civil partner", "civil partner", "civil partnership", "decree of dissolution" and "surviving civil partner".

An "absolute interest" includes the interest of a person who has a general power of appointment over property. An absolute interest is the greatest interest which a person may have in property. A person who has an absolute interest in property can deal with or dispose of that property as he/she pleases.

The "date of the disposition" in the case of a will or codicil or an intestacy, or a benefit under Part IX or section 56 of the Succession Act 1965, or an analogous benefit under the law of another territory, is defined as the date of death of the deceased person concerned. Part IX of the Succession Act 1965 deals with the legal right of the spouse of a deceased person who dies leaving a will. It also makes provision for the child or children of such a person. Section 56 deals with the right of the surviving spouse to require the dwelling and household chattels to be appropriated towards satisfaction of

any share of the surviving spouse.

Where the disposition consists of the failure to exercise a right or power, the "date of the disposition" is the date of the latest time when the disponer could have exercised the right or the power if that disponer were not *sui juris* i.e. not having full legal capacity (e.g. a minor) and not under a physical disability.

In any other case, the "date of the disposition" is the date on which the act (or, where there is more than one act involved, the last act) of the disponer was done by which that disponer provided or bound himself/herself to provide the property comprised in the disposition.

The "date of the gift" is defined as the date of the happening of the event on which the donee, or any person in right of that donee or on that donee's behalf, becomes beneficially entitled in possession to the benefit. (An executor or assignee, for example, can claim in right of a donee. A guardian of a minor child can claim on behalf of a minor child).

In the majority of cases, the "date of the inheritance" will be the date of death of the disponer. Where an inheritance is taken on the death of a life tenant, "the date of the inheritance" will be the date of death of the life tenant.

The inheritance may arise on an "event" referred to in ***section 3(2)***. The "date of the inheritance" is the date of the event under which a person takes the inheritance.

Where a gift becomes an inheritance by reason of its being taken under a disposition where the date of the disposition is within 2 years prior to the death of the disponer, the "date of the inheritance" is the date on which the gift was made.

A "discretionary trust", in addition to its normal meaning under general law, whereby the trustees have discretion to make payments from the trust for the benefit of one or more of the beneficiaries named in the trust instrument, includes a trust where property is held on trust to accumulate the income or part of the income of that property. Any entity which is similar in its effect to a discretionary trust (such as "foundations", the European equivalent of trusts) shall be treated as a discretionary trust irrespective of how it is described in the place where it is established. Any reference in this Act to trustees in relation to a discretionary trust shall be deemed to include persons acting in a similar capacity to trustees in relation to such an entity.

The term "disponer" means the person who directly or indirectly provided the property comprised in a disposition. Where more than one person provided the property, each person is deemed to be the disponer to the extent that he/she provided the property.

The definition of the term "disposition" is very wide. It includes, for example, the payment of money, the allotment of shares in a company, the grant or the creation of any benefit, the exercise of a general power of appointment in favour of any person other than the holder of the power, and a *donatio mortis causa,* i.e. a gift made in contemplation of death. It also includes a will or other testamentary disposition (e.g. a codicil to a will), an intestacy (whether total or partial), the payment of a share as a legal right under Part IX of the Succession Act 1965 to a deceased person's spouse or civil partneror the making of provision for the widow/surviving civil partneror child(ren) of a deceased person under section 56 or section 117 of the 1965 Act or an analogous share

or provision paid or made on the death of a deceased person to or for the benefit under the law of another territory or a resolution passed by a company that comes within the scope of ***subsection (3)***.

The expression "entitled in possession" means having a *present* right to the enjoyment of property as opposed to having a *future* such right.

Example

A, by deed, makes a gift of property to B for life and after B's life to C absolutely. B, in this example, is entitled in possession to the property. C, on the other hand, has an interest in expectancy in the property.

A person is also deemed, for the purposes of the Act, to be entitled in possession to an interest or share in a partnership, joint tenancy or estate of a deceased person in which that person is a partner, joint tenant or beneficiary, as the case may be. However, that person is not deemed to be entitled in possession to an interest in expectancy until an event happens whereby the interest ceases to be an interest in expectancy.

The expression "entitled in possession" is crucial, in the context of gift and inheritance tax, because a person will only be deemed to take a gift or an inheritance where that person becomes beneficially entitled in possession to a benefit under a disposition (see ***sections 5(1)*** and ***10(1)***).

A "general power of appointment" includes every power, right or authority, whether exercisable only by will or otherwise, which enables the holder of the power to appoint or dispose of property to whoever he/she thinks fit or to obtain such power, right or authority. It does not, however, include any power exercisable by an individual solely in a fiduciary capacity under a disposition not made by that individual.

A general power of appointment is equivalent to absolute ownership (see definition of "absolute interest").

The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest, whether vested or contingent, but does not include a reversion expectant on the determination of a lease. An estate in remainder or in reversion relates to a *future* interest in property. An example of a remainder interest is where a person receives a gift or an inheritance of property after an intervening life interest. A reversion is an interest in property which at some future time is to revert to the original owner of the property. This would arise where A grants an interest in property to B for a period of 5 years with a provision in the deed granting the interest that the property reverts to A at the end of the 5 year period.

A "limited interest" means—

- an interest (other than a leasehold interest) for the duration of a life or lives or for a period of certain duration e.g. 10 years, or
- any other interest which is not an absolute interest.

A "local authority" includes, for example, a county council, a city council and a town

council.

A "special power of appointment" means a power of appointment which is not a general power of appointment (see definition of "general power of appointment").

A person is deemed to have a general power of appointment over property even though he/she is not *sui juris* (i.e. does not have full legal capacity to contract or bind himself/herself by legal obligation, for example, a minor) or is under a physical disability. **(2)**

He/she is also deemed to have a general power of appointment over money which he/she has a general power to charge on property and over property of which he/she is a tenant in tail in possession. A tenant in tail can make himself/herself the absolute owner of property by a procedure known as "barring the entail" (this is a procedure allowed by law under which the tenant in tail in possession can dispose of the estate other than to his/her descendants).

Any resolution altering the rights of individual members of the company may be considered a disposition by a member(s) who lost out as a result in favour of others who gained but only if he/she/they could have prevented it by voting against it or otherwise (e.g. by inducing his/her/their nominees to vote against the resolution or by exercising any right vested in him/her/them by the articles of association to veto the resolution). **(3)**

For the purposes of the Act, the following persons are "relatives" of another person:

- the spouse of that other person, (4)(a)
- the father, mother, child, uncle or aunt of that other person, (4)(b)
- any child (other than that other person), and any child of a child, of any person who is, by virtue of ***paragraph (a)*** or ***(b)*** a relative of that other person, (4)(c)
- the spouse of a person who is by virtue of ***paragraph (b)*** or ***(c)*** a relative of that other person, (4)(d)
- the grandparent of that other person. (4)(e)

See notes on ***section 5(4)*** and ***section 10(2)*** regarding the rules concerning "full consideration" given for a gift or an inheritance and on ***sections 16***, ***21*** and ***27*** in relation to the valuation of shares in a private company.

Under ***subsection (1)***, "child" includes an adopted child. An adopted child is deemed to be the child of the person or persons who adopted him/her. He/she is, therefore, entitled to the Group A threshold in respect of a gift or inheritance from his/her adoptive parent(s). An adopted child has all the relationships to relatives of his/her adoptive parent(s) (e.g. the children of the person(s) who adopted him/her are regarded as his/her brothers and sisters, the parents of the person(s) who adopted him/her are regarded as his/her grandparents). It is also provided that the relationship that the adopted child had with his/her natural parent or parents is deemed to have ceased (but see note on ***paragraph 10*** of ***Schedule 2***). **(5)**

A reference to a person being resident in the State on a particular date means being **(6)**

resident here in the year of assessment in which that date falls. It will not be necessary to wait until the end of that year to determine whether or not a person is resident here. [From 1 January 2002 onwards, a year of assessment is a calendar year.]

These provisions set out how references in the Act to enactments, Parts, Chapters, sections, Schedules, subsections, paragraphs, subparagraphs, clauses or sub-clauses are to be construed. **(7) – (9)**

3 Meaning of "on a death"

Summary

This section explains what is meant by the expression "on a death" which is the basis of the distinction between a gift and an inheritance. If a benefit is taken "on a death", it is an inheritance (see ***section 10(1)***). If it is taken "otherwise than on a death", it is a gift (see ***section 5(1)***).

Details

This section sets out what precisely is meant by the expression "on a death".

The most obvious example is a legacy taken under a will or a benefit taken by a person under a deed when a life tenant dies. If a person takes a benefit at a time ascertainable only by reference to the death of a person, it will also be an inheritance e.g. a benefit taken under a will or deed to come into effect 1 year after the death of another person. **(1)(a)**

A person also becomes entitled "on a death" under a disposition where the date of the disposition is the date of death of the disponer. This arises in the case of a *donatio mortis causa* (i.e. a gift made in contemplation of death), a will or intestacy or a payment of a legal share under Part IX of the Succession Act 1965 to the surviving spouse or children of the deceased or any similar payment made, on the death of the deceased, to or for the benefit of any person under the law of another territory. **(1)(b)**

Where the benefit would otherwise be a gift but is taken under a disposition made within 2 years before the death of the disponer, it is treated as being taken "on a death" and thus subject to inheritance tax. **(1)(c)**

The taking of a benefit on the happening of an event referred to in ***subsection (2)*** after the cesser of an intervening life interest is also regarded as being "on a death". **(1)(d)**

Examples of the events referred to in ***subsection (2)*** are:

- a benefit taken on the death of a life tenant; **(2)(a)**
- a benefit taken when a trustee appointed property to him/her; **(2)(b)**
- where a person takes property from time to time under a discretionary trust; **(2)(c)**
- a benefit paid to a person on the happening of a contingency e.g. A creates an *inter vivos* settlement (i.e. a settlement between living persons) where, following his life interest in the settlement, the property passes to his son, B, subject to the contingency that, in the event of his daughter, C, marrying, the son is to pay her **(2)(d)**

€500,000. On her marriage, C takes an inheritance from A as disponer.

PART 2 GIFT TAX

Overview

This Part contains provisions dealing with gift tax. What is charged to tax as a gift is the property to which a donee becomes beneficially entitled in possession. Where a benefit is taken "on a death" within the meaning of ***section 3***, it will be liable to inheritance tax and not gift tax. If the property is purchased for full consideration in money or money's worth, no charge to tax arises.

The expression "taxable gift" is defined. The treatment, for tax purposes, of joint tenancies and the prevention of tax avoidance by gift-splitting is also provided for.

4 Charge of gift tax

This section imposes the charge to gift tax. The tax is charged on the taxable value (see ***section 28***) of every taxable gift (see ***section 6***) taken by a donee.

5 Gift deemed to be taken

Summary

This section identifies the type of benefits which will be a gift for the purposes of gift tax, distinguishes a gift from an inheritance and identifies the property which is to be valued for gift tax purposes.

Details

A person is deemed to take a gift when, under or as a consequence of a disposition, he/she becomes beneficially entitled in possession to a benefit. He/she is deemed to take a gift whether or not he/she already has some interest in the property in which he/she takes that benefit. In order to be regarded as a gift, the benefit must arise "otherwise than on a death". Most dispositions are for full consideration in money or money's worth. No question of a gift arises if full consideration has been paid. Normal commercial standards of value apply in determining whether a gift is deemed to be taken. **(1)**

A gift is deemed to consist of the whole, or the appropriate part, as the case may be, of the property in which the donee takes a benefit, or on which it is charged or secured or which the donee is entitled to have it charged or secured (see note on ***subsection (5)*** regarding the meaning of "the appropriate part"). It will be noted that what is valued is not the particular interest taken by the beneficiary but the *property* in which he/she takes the interest. **(2)(a)**

Where annuities or other periodic payments are not charged or secured on property, they are treated as consisting of a capital sum equal to an amount which, if invested in the Government security most recently issued prior to the date of the gift, would yield an **(2)(b)**

income equal to the annuity or periodic payment. The relevant security must be redeemable not less than 10 years after the date it is issued.

Example

A executes a deed of covenant whereby he covenants to pay B an annual sum of €1,000 for 7 years. The last security issued prior to the execution of the deed of covenant was 9% Government Bond 2001 issued on 21 May 1991. In order to obtain an income of €1,000 from this stock, a holding of—

$$\frac{€1{,}000 \times 100}{9} = €11{,}111$$

would be required.

If the stock is quoted at 97.5 cent, €11,111 of stock would cost—

$$\frac{€11{,}111 \times 97.5}{100} = €10{,}833.$$

The capitalised value of an income of €1,000 per annum is, therefore, €10,833 using this method.

(3) Tax is not chargeable on the notional sum deemed to exist for the purposes of ***section 5(2)(b)*** where the disponer was not domiciled in the State at the date of the disposition, where that date was before 1 December 1999. This is also the case where the disponer or the donee are not resident or not ordinarily resident in the State at the date of the disposition, where that date is on or after 1 December 1999. [Because the notional sum is deemed to consist of Irish Government securities, that notional sum would be deemed to be located in this country and might be taxable in the absence of this provision.]

(4) Where the whole or part of the consideration is an interest for the disponer's lifetime and the transferee is a relative of the disponer (see the definition of "relative" in ***section 2(1)***), that interest is not treated as consideration for the purpose of deciding whether a gift has been taken. It may, however, be treated as partial consideration for the purposes of ***section 28***. This provision is aimed at an artificial "sale" between relatives where the transferor "pays" for the benefit taken out of the gift itself.

(5) The "appropriate part" means, in effect, the part of the property which is sufficient to meet the benefit which is charged or secured on the property. It is calculated in accordance with the following formula:

$$\text{Entire property} \times \frac{\text{gross annual value of benefit}}{\text{gross annual value of entire property}}.$$

Example

If A transfers land to B absolutely, subject to and charged with an annuity of €10,000 per annum payable to C for life, and the land produces an income of €30,000 per annum, the gift taken by C is deemed to consist of one-third of the land. The gift taken by C is "the appropriate part".

C is treated, in effect, as taking a life interest from A in one-third of the land and B is treated as taking absolute interest from A in two-thirds of the land. Under ***section 28(4)***, C's life interest is valued in accordance with ***Schedule 1***.

When C dies, B will be deemed to take an inheritance of "the appropriate part" of the property then set free by the cesser of the annuity (see ***section 37***) from A absolutely.

Where a person acquires a right to a benefit, but that right is not legally enforceable because of lack of evidence (e.g. a memorandum sufficient to satisfy the Statute of Frauds) and the gift is completed at a later date, the gift is deemed to be taken at the later date. **(6)**

Where a gift arises on the transfer of shares in a family-controlled private company, the value of such shares is ascertained for gift tax purposes in accordance with ***section 27***. Genuine arm's length sales are excluded from this provision, however. **(7)**

6 Taxable gift

Summary

Where a gift is taken under a disposition made before 1 December 1999, all the property comprised in the gift is liable to tax where the disponer is domiciled in the State. Property located in the State is liable to tax irrespective of the domicile of the disponer.

Where a gift is taken under a disposition made on or after 1 December 1999, all the property comprised in the gift will be liable to tax where—

- the disponer is resident or ordinarily resident in the State at the date of the disposition, or
- where the donee (i.e. the beneficiary) is resident or ordinarily resident in the State at the date of the gift.

A foreign-domiciled person will not be considered to be resident or ordinarily resident in the State until 1 December 2004 and then only if he/she has been resident in the State for the 5 consecutive tax years preceding the relevant date.

Special rules apply to the taxation of gifts taken by donees from discretionary trusts.

Details

Where a gift is taken under a disposition made prior to 1 December 1999, the entire property comprised in the gift is liable to tax where, at the date of the disposition, the disponer is domiciled in the State. **(1)**

Example

A, who was domiciled in the State on 1 January 1999, transfers property to trustees on trust to B for 10 years and, at the end of that time, to C absolutely. The entire property, wherever it is situated, is liable to gift tax when C comes into possession of his/her interest, notwithstanding, for example, that the disponer is no longer domiciled in the State at that time.

If the disponer was not domiciled in the State at the date of the disposition, only so much of the gift as is located in the State at the date of the gift is liable to tax.

There are separate rules for determining to what extent, if any, a gift taken under a discretionary trust is taxable. Such a gift is taxable where the disponer was domiciled in the State—

- at the date of the disposition under which the donee takes the gift (generally the date the trust was created), or
- at the date of the gift,

or was so domiciled at the time of his/her death, where the gift was taken after his/her death.

Where a gift is taken under a disposition made on or after 1 December 1999, the entire property comprised in the gift is liable to tax in the following situations: **(2)**

- where the disponer is resident or ordinarily resident in the State at the date of the disposition;
- where the gift is taken under a discretionary trust and the disponer is resident or ordinarily resident in the State at the date of the disposition *or* at the date of the gift;
- where the gift is taken under a discretionary trust after the death of the disponer and that disponer was resident or ordinarily resident in the State at the date of his/her death; or
- where the beneficiary is resident or ordinarily resident in the State at the date of the gift.

Property located in the State is liable to gift tax, irrespective of the residence or ordinary residence of the disponer or the donee.

A right to the proceeds of sale of property is deemed to be located in the State to the extent that such property is unsold and situated in the State. **(3)**

A foreign-domiciled person will not be considered to be resident or ordinarily resident in the State until 1 December 2004 and then only if he/she has been resident in the State for the 5 consecutive tax years preceding that date. **(4)**

"company" and "share" have the same meanings as they have in ***section 27***; "company controlled by the donee" has the same meaning as is assigned to "company controlled by the donee or successor" by ***section 27***. **(5)(a)**

A person cannot artificially change the location of Irish assets by transferring them into a foreign, family-controlled private company. The measure operates by deeming the proportion of the value of a share in a foreign company that is directly or indirectly attributable to underlying Irish assets to be property located in the State. **(5)(b)**

The measure in ***subsection 5(b)*** will not apply to a disponer who was foreign-domiciled at all times up to and including the date of the gift, or, in the case of a gift taken after the death of the disponer, up to and including the date of death of that disponer or where the share in question is actually located in the State at the date of the gift. **(5)(c)**

7 Liability to gift tax in respect of gift taken by joint tenants

This section provides that where persons become beneficially entitled in possession to a gift as joint tenants, their liability to tax will be the same as if they took the gift as tenants in common in equal shares. The rationale behind the section is that each joint tenant could become the absolute owner of a share in the property by severing the joint tenancy.

8 Disponer in certain connected dispositions

Summary

This section seeks to prevent tax avoidance by gift-splitting. Where 2 or more gifts are made by successive disponers within 3 years, the second or subsequent gift is deemed to have been made by the original disponer to the ultimate beneficiary. Genuine cases are excluded from the scope of the section.

Details

Where 2 or more gifts are made by successive disponers within a period of 3 years, the second or subsequent gift is deemed to have been made by the original disponer to the ultimate beneficiary. **(1)**

Example

A gifts property to B. B gives it to C who, in turn, gives it to D. The gifts are made within 3 years. C and D are deemed to take their gifts from A.

The section does not apply where the second or subsequent disposition was not made with a view to enabling or facilitating the making of the first disposition or the recovery of the cost of that disposition. **(2)**

PART 3 INHERITANCE TAX

Overview

This Part, which consists of 3 Chapters, contains provisions dealing with mainstream inheritance tax and with the initial 6% charge and the 1% annual charge imposed on property comprised in certain discretionary trusts.

Chapter 1 deals with the charge to tax on mainstream inheritances. It also contains provisions dealing with the disclaimer of benefits and joint tenancies.

Chapter 2 deals with the initial 6% charge imposed on certain discretionary trusts. The charge applies only where the settlor is dead and where none of the principal objects, if any, of the trust (i.e. the settlor's spouse/civil partner, children/children of a civil partner and certain grandchildren) is under the age of 21 years (25 years where the property became subject to the discretionary trust on or after 25 January 1984 and before 31 January 1993). The scheme of the legislation is to tax the property in the discretionary trust as if the trust and the trustees took an inheritance of that property on the relevant date, and the general provisions of the Act (e.g. valuation rules) apply to those inheritances.

Chapter 3 deals with the annual 1% charge imposed on certain discretionary trusts. These trusts would normally have been liable to the 6% charge.

CHAPTER 1

General

9 Charge of inheritance tax

This section imposes the charge to inheritance tax. The tax is charged on the taxable value (see ***section 28***) of every taxable inheritance (see ***section 11***) taken by a successor.

10 Inheritance deemed to be taken

Summary

This section relates the charge to tax on inheritances to the property involved in the same way as ***section 5*** does for gifts.

Details

(1) Where, under a disposition, a person becomes beneficially entitled in possession on a death to any benefit otherwise than for full consideration in money or money's worth, he/she is deemed to take an inheritance. This is so irrespective of whether the person

becoming so entitled already has an interest in the property in which he/she takes such benefit.

(2) The provisions of ***subsections (2)***, ***(4)*** and ***(5)*** of ***section 5*** apply, subject to any necessary modifications, in relation to an inheritance as they apply in relation to a gift (see notes on ***section 5*** for details regarding those subsections).

(3) Tax is not chargeable on the notional sum deemed to exist for the purposes of ***section 5(2)(b)*** where the disponer was not domiciled in the State at the date of the disposition, where that date was before 1 December 1999. This is also the case where the disponer or the successor are not resident or ordinarily resident in the State at the date of the disposition, where that date is on or after 1 December 1999 (see note on ***section 5(3)***).

(4) Where an inheritance arises on the transfer of shares in a family-controlled private company, the value of such shares is ascertained for inheritance tax purposes in accordance with ***section 27***. Genuine arm's length sales are excluded from this provision, however.

11 Taxable inheritance

<u>Summary</u>

Where an inheritance is taken under a disposition made before 1 December 1999, the entire property comprised in the inheritance is liable to tax where the disponer is domiciled in the State at the date of the disposition. In any other case, only the property located in the State is liable to tax.

Where an inheritance is taken under a disposition made on or after 1 December 1999, the entire property comprised in the inheritance is liable to tax where—

- the disponer is resident or ordinarily resident in the State at the date of the disposition, or
- the successor i.e. the beneficiary (other than in the case of certain discretionary trusts to which the 6% and 1% charges apply) is resident or ordinarily resident in the State at the date of the inheritance.

A foreign-domiciled person will not be considered to be resident or ordinarily resident in the State for this purpose until 1 December 2004 and then only if he/she has been resident in the State for the 5 consecutive years preceding that date.

<u>Details</u>

(1) Where an inheritance is taken under a disposition made prior to 1 December 1999, the "taxable inheritance" means the whole of the inheritance where the disponer is domiciled in the State at the date of the disposition under which the successor takes the inheritance.

Example

A, who is domiciled in the State, transfers property to trustees on trust to B for life and, on his death, to C absolutely. C will be liable to tax when B dies even though A may no longer be domiciled in the State at the date of B's death.

In any other case, the location of the property at the date of the inheritance is taken into account. Where, at that date, the whole of the property—

- which was to be appropriated to the inheritance, or
- out of which the property was to be appropriated to the inheritance,

was located in the State, the "taxable inheritance" means the whole of the inheritance. A specific bequest of "all my shares in Allied Irish Bank" in the will of a foreigner is an example of property which was to be appropriated to the inheritance. A specific bequest of "€2,000 from my account in Allied Irish Bank, Rathfarnham" is an example of property out of which the property was to be appropriated to the inheritance.

As the securities and bank account were located here at the date of death, the entire legacies are liable to tax notwithstanding that, at the date when the legacies are retained for the legatees, the securities may have been sold or the bank account may have been closed and the proceeds are held in a foreign bank.

Where, however, the property referred to above is located partly inside and partly outside the State, the part or proportion of the property that is located in the State at the date of the inheritance (e.g. the Irish securities in a bequest of "all securities" contained in a will) is liable to tax.

(2) Where an inheritance is taken under a disposition made on or after 1 December 1999, all the property comprised in the inheritance is liable to tax where—

- the disponer is resident or ordinarily resident in the State at the date of the disposition, or
- the successor (other than a discretionary trust to which the 6% and 1% charges imposed on certain discretionary trusts under ***sections 15(1)*** and ***20(1)*** respectively apply) is resident or ordinarily resident in the State at the date of the inheritance.

Property located in the State is liable to inheritance tax irrespective of the residence or ordinary residence of the disponer or the successor.

[As regards "property which was to be appropriated to the inheritance" and "out of which property was to be appropriated to the inheritance", see the last three paragraphs of the note on ***subsection (1)*** which are also relevant to inheritances taken under dispositions made on or after 1 December 1999.]

(3)(a) Property which was not applied to satisfy the inheritance (i.e. property specifically

bequeathed by will to another beneficiary) is to be ignored for the purpose of ascertaining what part of the property concerned is located in the State.

A right to the proceeds of sale of property is deemed to be located in the State to the extent that such property is unsold and located in the State. **(3)(b)**

A foreign-domiciled person will not be considered to be resident or ordinarily resident in the State until 1 December 2004 and then only if he/she has been resident in the State for the 5 consecutive tax years preceding the relevant date. **(4)**

"company" and "share" have the same meanings as they have in ***section 27***; "company controlled by the donee" has the same meaning as is assigned to "company controlled by the donee or successor" by ***section 27***. **(5)(a)**

A person cannot artificially change the location of Irish assets by transferring them into a foreign, family-controlled private company. The measure operates by deeming the proportion of the value of a share in a foreign company that is directly or indirectly attributable to underlying Irish assets to be property located in the State. **(5)(b)**

The measure in ***subsection (5)(b)*** will not apply to a disponer who was foreign-domiciled at all times up to and including the date of the inheritance or where the share in question is actually located in the State at the date of the inheritance. **(5)(c)**

12 Disclaimer

Summary

This section provides that benefits which are disclaimed are ignored for tax purposes. It also provides that the disclaimer is not regarded as a disposition and that any consideration received by the person who made the disclaimer is deemed to be a gift or inheritance, as the case may be, taken from the person who paid the consideration.

Details

Inheritance tax is not payable where a benefit under a will or intestacy or an entitlement to an interest in settled property is disclaimed. This also applies where a claim under a purported will in respect of which a grant of probate or letters of administration was not issued or under an alleged intestacy in respect of which such grant was issued is waived or a right under Part IX of the Succession Act 1965, which deals with the legal right of the spouse of a person who makes a will and provision for his/her children, or an analogous right under the law of another country is renounced, disclaimed, elected against or lapses. In the case of an entitlement to an interest in settled property, neither gift tax nor inheritance tax is payable where the entitlement to the interest is disclaimed. **(1)**

The disclaimer, waiver, etc. is not a disposition by the person disclaiming the benefit. **(2)**

Any consideration received for giving up the benefit disclaimed is a gift or inheritance from the disponer who provided that benefit. **(3)**

13 Surviving joint tenant deemed to take an inheritance, etc.

Summary

This section provides that, where joint tenants own property, on the death of one of them, the survivor takes an inheritance from the deceased joint tenant, as disponer.

Details

Where persons are joint tenants and one of them dies, the survivor or survivors is/are deemed to have taken the deceased's share as an inheritance derived from him/her/them, because the deceased could have made himself/herself absolute owner of his/her share up to the date of his/her death. **(1)**

Following the rule made by ***section 7*** as to gifts, the beneficiaries of property left to persons as joint tenants will be taxed as if they took as tenants in common in equal shares. This is because each joint tenant has power to become the absolute owner of a share in the property by severing the joint tenancy. **(2)**

CHAPTER 2

Initial levy on discretionary trusts

*14 Interpretation (***Chapter 2***)*

Summary

This section is an interpretation section.

Details

There are 2 definitions in this section—

- "object" means a person who may at any time derive a benefit from the capital or income or part of the capital or income of the trust,
- "principal objects" means the spouse/civil partner, children/children of civil partners and children of a pre-deceased child/child of a civil partner of the disponer.

15 Acquisitions by discretionary trusts

Summary

This section provides that where property is or becomes subject to a discretionary trust on or after 25 January 1984, the trust will be deemed to have taken an inheritance accordingly, which is chargeable at the rate of 6%. This once-off charge for tax will not arise until—

- the disponer is dead, and
- none of the principal objects (see ***section 14***) of the trust, if any, is under the age of 21 years (25 years where the property became subject to the discretionary trust on or after 25 January 1984 and before 31 January 1993).

Where there are no principal objects of the trust, the charge will arise when the disponer dies if the property in the trust is held on a discretionary trust as defined in ***section 2(1)***.

All the provisions of the Act will apply except where restricted by ***section 16***.

Details

Where property becomes subject to a discretionary trust on or after 25 January 1984, the trust will be deemed, on the latest of 3 dates, to have become beneficially entitled in possession to an absolute interest in the property comprised in the trust on that latest date and to have taken an inheritance as if the trust and the trustees were together a person and the latest date is the date of the inheritance. The 3 dates are: **(1)**

- the date on which the property becomes or became subject to the discretionary trust;
- the date of death of the disponer; or
- where there are principal objects of the trust, the date on which there ceases to be a principal object of the trust who is under the age of 21 years (25 years where the property became subject to the discretionary trust on or after 25 January 1984 and before 31 January 1993).

For the purposes of section 15 and section 20, where a discretionary trust is created under the will (including under a codicil to that will) of a deceased person property shall be deemed to be subject to the trust on the date of death of that person. **(1A)**

Property which was subject to a discretionary trust on 25 January 1984 or on 31 January 1993 is deemed to have become subject to the trust on those dates. The first date referred to is the date when the charge originally applied. Where property became subject to a discretionary trust on or after 31 January 1993, the age requirement of a principal object was reduced from 25 years to 21 years. **(2), (3)**

An interest in expectancy is not property until an event happens whereby the interest ceases to be an interest in expectancy, or is represented by property which is not an interest in expectancy e.g. the proceeds of sale of a future interest. **(4)(a)**

An interest in a life assurance policy is not property until the interest becomes an interest in possession under ***section 41*** or is represented by property which is not an interest in possession. **(4)(b)**

While it is intended that property in a discretionary trust should be charged with inheritance tax on one occasion only, it may happen that the same property in the same discretionary trust may be chargeable with tax more than once. For example, a person died in 1990 leaving his/her residuary estate to trustees on discretionary trusts for his/her nephews and nieces. In 1995, the trustees appointed a life interest in the trust property to a niece for life. The niece died in 2003. Under ***subsection (1)***, a further claim for tax would arise in 2003 when the niece dies and the property becomes subject to the discretionary trust. ***Subsection (5)*** ensures that only one charge for tax will arise i.e. the charge arising in 1990. **(5)**

16 Application of this Act

Summary

Certain provisions of the Act, which apply to inheritances generally, are restricted or amended to allow for the fact that the successor in question is a notional successor.

Details

Where a charge to discretionary trust tax arises under ***section 15***, all the provisions of the Act apply to such a charge, but with the following exceptions:

- a reference in ***section 27*** to a company controlled by the successor and the definition of "group of shares" in that section is construed as if the list of persons contained in ***subsection (3)*** of that section included the following: (a)

    - the trustees of the discretionary trust,
    - the living objects of the discretionary trust,
    - the relatives of those objects,

  nominees of those trustees or of the relatives (see note on ***section 2(4)***) of those objects, and

  the trustees of a settlement whose objects include the living objects of the discretionary trust or relatives of those living objects;

- the valuation date of the notional inheritance will be the date of the inheritance or the valuation date ascertained in accordance with ***section 30***, whichever is the later date; (b)

- since there is no actual successor as such, the trustees (who are deemed to take an inheritance) are the persons primarily accountable for the payment of the tax; (c)

- any object of the trust who has received a benefit from the trust subsequent to the date of the charge is also accountable for the payment of the tax; (d)

- ***sections 45(1)***, ***50***, ***56*** and ***81*** and ***Schedule 2*** do not apply to discretionary trust tax. (e)

Section 45(1) specifies the persons who are primarily accountable for the payment of capital acquisitions tax. That provision is replaced by ***paragraph (c)***. ***Section 50*** and ***Schedule 2***, which deal with the computation of the tax, are replaced by ***section 18*** of this Act.

Section 56 deals with the payment of inheritance tax by transfer of Government securities and ***section 81*** grants exemption in respect of Government securities when in the beneficial ownership of a person neither resident nor ordinarily resident in the State.

17 Exemptions

Summary

This section exempts from the charge for discretionary trust tax under ***section 15*** trusts which are set up *exclusively* for charitable purposes in the State or Northern Ireland, for the purposes of a superannuation or unit trust scheme, for the benefit of improvident or incapacitated individuals or for the upkeep of heritage houses or gardens.

Details

A discretionary trust tax charge will not arise in relation to trusts which have been set up *exclusively* for certain purposes. The following trusts are exempt from discretionary trust tax:

- discretionary trusts set up exclusively for purposes which, in accordance with the law of the State, are public or charitable. Prior to the passing of the 2014 Finance Act only discretionary trusts created exclusively for public or charitable purposes in the State or Northern Ireland qualified for exemption from discretionary trust tax. The Finance Act 2014 removed the territorial limit of "the State or Northern Ireland" for discretionary trusts created on or after the passing of the Act. In effect the exemption now applies wherever the public or charitable purpose is based. (1)(a)

- trusts set up in connection with superannuation schemes. The funds of these schemes are normally held by trustees to meet claims as and when they arise, and are often held on trusts which give powers to the trustees sufficiently wide to be classed as discretionary; (1)(b)

- unit trust schemes within the meaning of the Unit Trusts Act 1990. Again, the trustees might have powers, in connection with the funds of a unit trust scheme, which might be classed as discretionary, giving rise to a discretionary trust tax claim; (1)(c)

- discretionary trusts for the benefit of one or more named individuals who are, because of age or improvidence, or of physical, mental or legal incapacity incapable of managing his/her/their affairs; (1)(d)

- discretionary trusts set up exclusively for the upkeep of houses and gardens referred to in ***section 77(6)***, i.e. houses and gardens situated in the State and not held for the purposes of trading which— (1)(e)

- are of national, scientific, historic or artistic interest, and
- are open to the public.

Discretionary trust tax is not chargeable— **(2)**

- where property is taken by the State when the trust terminates, or
- where notional sums representing the benefit of interest-free loans etc. are deemed to be taken by a discretionary trust under the provisions of ***section 40***.

18 Computation of tax

Summary

This section provides that the rate of tax imposed on certain discretionary trusts by ***section 15*** is 6%. If the property is transferred absolutely to the beneficiaries of such trusts within 5 years of certain events specified in the section, the charge will be restricted to 3%. The excess amount of tax paid will be refunded.

Details

"earlier relevant inheritance" means a relevant inheritance deemed to be taken on the date of death of the disponer; **(1)**

"later relevant inheritance" means a relevant inheritance which, after the date of death of the disponer, is deemed to be taken by a discretionary trust by virtue of there ceasing to be a principal object of that trust who is under the age of 21 years;

"relevant inheritance" means an inheritance which, by virtue of ***section 15(1)***, is deemed to be taken by a discretionary trust;

"relevant period" means—

- in relation to an earlier relevant inheritance, the period of 5 years commencing on the date of death of the disponer;
- in relation to a settled relevant inheritance, the period of 5 years commencing on the date of death of the life tenant; and
- in relation to a later relevant inheritance, the period of 5 years commencing on the latest date on which a later relevant inheritance was deemed to be taken from the disponer;

"settled relevant inheritance" means a relevant inheritance taken on the death of a life tenant;

" appropriate trust", in relation to a relevant inheritance, means the trust by which that

inheritance was deemed to be taken;

Tax is charged at the rate of 6% on the taxable value (see note on ***section 28***) of the taxable inheritance (see note on ***section 11***) chargeable under ***section 15***. **(2)**

Notwithstanding ***subsection (2)***, if the property comprised in the discretionary trust is transferred absolutely to any one or more of the objects of the trust within 5 years of the death of the disponer or the life tenant or the date when there ceases to be a principal object of the trust who is under the age of 21 years (as the case may be), the charge will be restricted to 3%. **(3)**

Where 2 or more persons are beneficially entitled in possession to an absolute interest in property, those persons will not be treated, for the purposes of ***subsection (3)***, as beneficially entitled in possession by reason only that together they are beneficially so entitled in possession. For example, the trustees of a discretionary trust appoint property so that it is held in trust to pay the income to A during his/her life and thereafter to be held by B absolutely. Neither A nor B have an absolute interest in the trust property but, acting together, they can demand the termination of the trust and the transfer of the trust property to them in agreed shares. This provision ensures that this type of appointment will not qualify for the refund. **(4)**

CHAPTER 3

Annual levy on discretionary trusts

*19 Interpretation (***Chapter 3***)*

Summary

This section defines a number of terms used in ***Chapter 3*** of ***Part 3*** of the Act.

Details

There are 4 definitions in the section as follows:

- "chargeable date" means 5 April and 31 December in the year 2006 and 31 December in the year 2007 and subsequent years;
- "chargeable discretionary trust" means a discretionary trust in relation to which—
  - the disponer (i.e. the settlor) is dead, and
  - none of the principal objects of the trust (if any) is under the age of 21;
- "object" and "principal objects", in relation to a discretionary trust, have the meanings, respectively, given to them by ***section 14*** of the Act i.e.—

  "object", in relation to a discretionary trust, means a person for whose benefit the

income or capital, or any part of the income or capital, of the trust property is applied, or may be applied;

"principal objects", in relation to a discretionary trust, means such objects, if any, of the trust for the time being as are—

- the spouse/civil partner of the disponer,
- the children of the disponer and the civil partner of the disponer, or
- the children of a child of the disponer/civil partner of the disponer who pre-deceased the disponer.

20 Annual acquisitions by discretionary trusts

Summary

This section provides that, where on a chargeable date in any year, commencing with the year 2003, property is subject to a chargeable discretionary trust (see ***section 19***), the trust will be deemed to have taken an absolute inheritance on that date. All the provisions of the Act will apply to the inheritance so taken, except where restricted by ***section 21***.

The section also contains other provisions—

- to counter avoidance of the annual charge to tax by appointments of property out of the discretionary trust for short periods,
- to ensure that certain future interests not in possession on the relevant date will not be taxed, and
- to eliminate a 1% annual charge on property in the same year in which a once-off 6% charge is imposed on the same property under ***section 15*** of the Act.

Details

(1) Where, on a chargeable date in any year, commencing with the year 2003, property is subject to a chargeable discretionary trust, the trust will be deemed on each chargeable date to become beneficially entitled in possession to an absolute interest in that property and to have taken on each such date an inheritance as if the trust and the trustees were together a person for the purposes of the Act. Each chargeable date on which property is subject to a chargeable discretionary trust is the date of the inheritance.

The definition of the term "chargeable discretionary trust" ensures that an annual 1% charge cannot arise on any chargeable date while—

- the disponer is alive, or
- any one of the principal objects (i.e. the disponer's spouse, his/her children and the children of a pre-deceased child of the disponer) of the trust, if any, is under the age of 21 years.

Where there are no principal objects of the trust, the charge will apply on the chargeable date each year if the property is subject to a chargeable discretionary trust on that date (but see note on ***subsection (4)***).

Property includes property representing such property. **(2)(a)**

This provision prevents the avoidance of the 1% annual charge by the appointment of property out of a discretionary trust for short periods spanning a chargeable date. **(2)(b)**

Where property is subject to a chargeable discretionary trust prior to a chargeable date, it is deemed to remain subject to a chargeable discretionary trust notwithstanding the creation of an interest in possession which is in existence on the chargeable date if that interest is—

- revocable, or
- will cease on an event other than—
    - the death of that person, or
    - the expiration of a period certain of not less than 5 years.

A claim for discretionary trust tax will not arise in respect of an interest in remainder until it becomes an interest in possession on, say, the death of a life tenant or in respect of an interest in a policy of assurance until the policy matures on a death, is surrendered or where the insurer makes a payment of money or money's worth in full or partial discharge of the policy under ***section 41*** of the Act. **(3)**

Property will not be subject to a 1% discretionary trust tax charge on any chargeable date if that same property is subject to the once-off 6% charge under the provisions of ***section 15*** of the Act or under section 103 of the Finance Act 1984 on the same date or within the year prior to that date. **(4)**

21 Application of this Act

Summary

Certain provisions of the Act, which apply to inheritances generally, are restricted or amended to allow for the fact that the successor in question is a notional successor.

Details

Where a charge to discretionary trust tax arises under ***section 20***, all the provisions of the Act apply to such a charge except for those set out below.

A reference in ***section 27*** to a company controlled by the successor and the definition of "group of shares" in that section is construed as if the list of persons contained in ***subsection (3)*** of that section included the following: **(a)**

- the trustees of the discretionary trust,
- the living objects of the discretionary trust,
- the relatives (see note on ***section 2(4)***) of those objects,
- nominees of those trustees or of the relatives of those objects, and
- the trustees of a settlement whose objects include the living objects of the discretionary trust or relatives of those living objects.

The valuation date in respect of the 1% levy is the same as the chargeable date, i.e. 5 April and 31 December in the year 2006 and 31 December in the year 2007 and subsequent years. If 1% annual charges have arisen before the valuation date for the initial 6% charge has arisen, then the valuation date for those accrued annual 1% charges is the same as the valuation date for the initial 6% charge. **(b)**

Since there is no actual successor, as such, the trustees are the persons primarily accountable for the payment of the tax. **(c)**

Any object of the trust who has received a benefit from the trust subsequent to the date of the charge is also accountable for the payment of the tax. **(d)**

[This provision has been deleted by section 117 of the Finance Act 2006.] **(e)**

Certain provisions of the Act do not apply in relation to the 1% charge to discretionary trust tax imposed by ***section 20***. **(f)**

Section 30 of the Act is replaced by ***paragraph (b)*** of this section. ***Section 45(1)***, which specifies the persons who are primarily accountable for payment of capital acquisitions tax, is replaced by ***paragraph (c)*** of this section.

Section 50 deals with the computation of mainstream capital acquisitions tax. ***Section 81*** grants exemption in respect of Government securities when in the beneficial ownership of a person who is neither resident nor ordinarily resident in the State. ***Schedule 2***, which deals with the computation of tax, is replaced by ***section 23***.

22 Exemptions

Summary

This section exempts from the 1% annual discretionary trust tax charge trusts, property and inheritances which are exempted from the once-off 6% discretionary trust tax charge.

Details

The scheme of the section is to apply to discretionary trusts the same exemptions from the 1% annual charge as are available in relation to the once-off 6% charge. Those exemptions arose under ***section 17(1)*** and ***(2)***.

The trusts which are exempt from the charge to discretionary trust tax are as follows:

- trusts which are created exclusively for public or charitable purposes in the State or Northern Ireland,
- trusts created in connection with superannuation schemes,
- unit trust schemes within the meaning of the Unit Trusts Act 1990,
- trusts created for the benefit of one or more named individuals who are, because of age or improvidence, or of physical, mental or legal incapacity, incapable of managing his/her/their affairs, and
- trusts created exclusively for the upkeep of heritage houses and gardens referred to in ***section 77(6)*** of the Act i.e. houses and gardens situated in the State and not held for the purpose of trading which—

  are of national, scientific, historic or artistic interest, and

  are open to the public.

For details regarding these exemptions, see notes on ***section 17***.

23 Computation of tax

Tax is charged at the rate of 1% on the taxable value (see ***section 28***) of a taxable inheritance (see ***section 11***) chargeable under ***section 20***. The charge for tax arising on 31 December 2006 (see note relating to the definition of "chargeable date" in ***section 19***) will be 73.97% of the tax due on that date to take account of the fact that the period from 5 April to 31 December is less than a year.

24 Values agreed

Summary

This section is designed to reduce compliance and collection costs in connection with the 1% annual discretionary trust tax charge. It provides that in relation to houses and lands or shares which are not quoted on a stock exchange, the values agreed between the taxpayer and the Revenue Commissioners for one chargeable date will, subject to certain exceptions, apply to the following 2 chargeable dates where the same property is liable to the 1% charge.

Details

The following conditions must be met before a value, which will stand for a chargeable date and the following 2 chargeable dates, may be agreed:

- a 1% discretionary trust tax charge must arise on a chargeable date (the first (1)(a)

chargeable date),

- an accountable person must have furnished all the information necessary to enable the Revenue Commissioners to ascertain the market value of houses, lands or non-quoted shares in the taxable inheritance taken on that chargeable date, (1)(b)

- the market value of that property must be agreed between the accountable person and the Revenue Commissioners on foot of an application in writing by the applicant to the Revenue Commissioners, (1)(c)

- a 1% discretionary trust tax charge must arise on either or both of the following chargeable dates, and (1)(d)

- the same property must be subject to a 1% discretionary trust tax charge on these subsequent chargeable dates. (1)(e)

Where the market value of property is determined in accordance with ***subsection (1)*** in respect of the valuation date 5 April 2006, then that market value will be treated as the market value of the property on the valuation date 31 December 2006. **(1A)**

An agreed value will not be binding in the following circumstances: **(2)**

- where there is failure to disclose material facts either in respect of the property in question, or any other property, comprised in a relevant discretionary trust on any of the 3 chargeable dates covered by the agreement,

- where, before the third chargeable date—

  in the case of houses or lands, there is a change in the tenure under which the property is held or let (e.g. where a discretionary trust holding a leasehold interest in a house acquired the fee simple interest), or

  in the case of non-quoted shares, there is any change in the capital or the ownership of the capital of the company or of the rights of the shareholders between themselves (e.g. where the company passed a resolution altering the rights attaching to the shares and, therefore, altering the rights of the shareholders between themselves).

The trustees can opt out of the agreement if, before the third chargeable date—

- there is a change which would materially alter the value of the real property over and above normal fluctuations in value, or

- there is a material change in the company's assets or in their market value over and above normal fluctuations in value in the case of unquoted shares.

An agreement made is binding on the persons who, as such, are accountable for payment of the tax on the first, second and third chargeable dates. **(3)**

25 Penalty

[This section has been deleted by section 98 and paragraph 4(a) of Schedule 5 of that Act with effect from 24 December 2008.]

PART 4 VALUE OF PROPERTY FOR TAX

Overview

This Part deals with matters such as the market value of property, the market value of certain shares in private trading companies, the taxable value of a taxable gift or taxable inheritance, contingencies affecting gifts or inheritances and the valuation date for tax purposes.

The value of a gift or an inheritance will normally be its open market value on the valuation date.

In the case of unquoted shares or securities, it is assumed that all the relevant information, which a prudent purchaser might require, is available to him/her.

Special provision is made for the valuation of shares in a private company (as defined) "controlled" by a donee or successor. "Control" includes control through a combination of some or all of family shareholdings, powers of voting or of dictating dividend policy, nominee holdings, trust holdings or holdings of other controlled companies. Where control, as defined, exists, the element of control is taken into account in arriving at the value of the shares.

The value on which tax is charged is also dealt with. In the first instance, debts and other liabilities to which the gift or inheritance is subject are deducted from the market value, the balance remaining being called the "encumbrance-free value". If the donee or successor takes property comprised in the gift or inheritance as absolute owner, any consideration given by him/her is then deducted. (A different rule applies where the donee or successor takes a limited interest – see notes on ***section 28***).

If the benefit of a gift or of an inheritance taken by a person is to cease on the happening of a contingency, the contingency is to be ignored in computing tax. If the contingency happens, the tax will be adjusted as if the person took a limited interest for the actual period he/she had the property. Tax will, however, be payable in respect of any property substituted for the gift or inheritance which was given up.

As regards the date on which property is to be valued, the donee of a gift is normally entitled from the date of the gift and this date is the usual valuation date. For inheritances, the valuation date is, normally, the date of ascertainment of the residue or other benefit and of its retention for the benefit of the successor.

26 Market value of property

<u>Summary</u>

This section provides that the market value of any property required to be valued under the Act, other than certain shares in private companies which are dealt with in ***section 27***, is the price which the property would fetch if sold in the open market, on the date on which it is to be valued, in circumstances calculated to result in the best price for the

vendor.

The section makes provision for the inspection of property and the payment of the costs of valuation where the Revenue Commissioners nominate a valuer to prepare a valuation.

In valuing unquoted shares or securities, it is assumed that all the relevant information which a prudent purchaser might require is available to him/her.

Details

"unquoted shares or securities" in ***subsection (6)*** means shares or securities which are not dealt in on a stock exchange. **(1)**

The open market value to a vendor of the property is the basic criterion in arriving at the value of property required to be valued at market value for the purpose of the tax, except where (as in ***section 27***) different provisions apply. **(2)**

In the absence of an actual sale of property on the date on which such property is to be valued, the market value will normally be a matter for negotiation between the parties and the Revenue Commissioners. While the price which would be realised on a notional sale is the price which, in the opinion of the Revenue Commissioners, the property would fetch, there is a right of appeal against their opinion (***sections 66*** and ***67***)—

- to the Land Values Reference Committee, in the case of real property (which includes leasehold property),
- to the Appeal Commissioners, in respect of other property, or
- ultimately, to the Courts.

In arriving at their estimate of market value of property, the Commissioners must take no account of the possibility of the property realising less than its best price by being sold as a block of property, rather than, if it is more profitable to do so, in separate lots. If, for example, a large block of shares were placed on the market on one day, the price would be depressed. The possibility of a "flooded market" is to be ignored. **(3)**

The Revenue Commissioners can use all means and information available to ascertain the market value. **(4)**

Any person having custody or possession of property required to be valued for tax purposes must, if given reasonable notice, allow reasonable access to the property for the purpose of such inspection, subject to a penalty for non-compliance, which is provided for in ***section 58(2)***.

The Revenue Commissioners will pay the costs of experts who are retained by them to assist them in valuing property. **(5)**

In valuing unquoted shares or securities, it will be assumed that there is available to any prospective purchaser of the shares or securities all the information which a **(6)**

prudent prospective purchaser might reasonably require if he/she were proposing to purchase them from a willing vendor by private treaty and at arm's length.

27 Market value of certain shares in private companies

Summary

This section makes special provision for the valuation of shares in a private company (as defined) which is deemed to be controlled by the donee or successor. "Control" includes control through a combination of some or all of family shareholdings, powers of voting or of dictating dividend policy, nominee holdings, trust holdings or holdings of other controlled companies. Where control, as defined, exists, this is taken into account in arriving at the value of the shares. The section also defines other terms used in the section. Where no question of control arises, shares in such a company are valued in accordance with ***section 26***.

Details

"group of shares", in relation to a private company, means the aggregate of the shares in the company of the donee or successor, the relatives of the donee or successor, nominees of the donee or successor, nominees of relatives of the donee or successor, and the trustees of a settlement whose objects include the donee or successor or relatives of the donee or successor; **(1)**

"nominee" includes a person who may be required to exercise his/her voting power on the directions of, or who holds shares directly or indirectly on behalf of, another person;

"private company" means, broadly, 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;

"share", in relation to a private company and in addition to the interpretation of share in ***section 2(1)***, includes every debenture, or loan stock, issued otherwise than as a part of a transaction which is wholly and exclusively a bona fide commercial transaction.

The market value of each share in a company which (after taking the gift or inheritance) is controlled by the donee or successor is to be ascertained as follows: **(2)**

- ascertain the value of the controlled "group of shares" i.e. all shares owned by the donee/successor, relatives, nominees and trustees as a single majority holding, and
- apportion the value of the group as between the shares acquired and any other shares concerned having due regard to class rights.

For example, a donee or successor owns 10% of the shares and relatives own another 80%. The value of the total 90% is calculated and the value of the 10% holding is taken as 1/9th of that value. In the absence of ***subsection (1)***, the 10% holding would be valued as a minority holding.

As between shares of the same class, the apportionment is made on the basis of nominal amounts.

If the controlled group of shares includes different classes of shares (e.g. A ordinary, B ordinary, preference, etc.), regard will be had to the rights attaching to each class.

For the purposes of calculating the market value of shares in a controlled private company (Company A) which owns shares in another private company (Company B) for the purposes of ***subsection (1)***, it must first be established whether Company B is a company controlled by the donee or successor. If it is, then the shares held by Company A in Company B must be valued on the basis that Company A held the same element of control over Company B as was held by the donee or successor and his/her relatives, etc.

A company is deemed to be controlled by the donee or successor if any one or more of the following control it, i.e.: **(3)**

- the donee or successor;
- his/her relatives (see note on ***section 2(4)***);
- his/her nominees;
- nominees of his/her relatives;
- trustees of a settlement whose objects include him/her or his/her relatives;
- any company similarly controlled by him/her (regarded for this purpose as being "related" to him/her).

For the purposes of the section, a company will be deemed to be under the control of not more than 5 persons if any 5 or fewer persons together exercise, or are able to exercise, or are entitled to acquire control, whether direct or indirect, of the company. For this purpose, the following persons will be treated as a single person: **(4)(a)**

- persons who are relatives of any other person together with that other person;
- persons who are nominees of any other person together with that other person;
- persons in partnership; and
- persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person.

A person will be deemed to have control of a company if he/she has any of the following powers:

- voting control which arises when he/she has a majority of the votes, or is capable (through, for example, shares held for him/her by a bare trustee) of directing others how to vote on any or all questions affecting the company as a whole. Some shareholders are, by the company's articles of association, denied (4)(b)(i)

voting rights except on certain questions such as a winding-up. If a shareholder has a requisite majority of votes capable of deciding such a question, he/she will have control;

- power to exercise or control the exercise of the powers of— (4)(b)(ii)
  - a board of directors;
  - a governing director; or

  to nominate a majority of the board, or a governing director, or to veto the appointment of a director, or any similar powers. Thus, a person has control if he/she is a sole director with full powers of a board of directors, or if he/she is a governing director;

- receipt of dividend: a person is deemed to control the company through receipt of (or entitlement to) more than 50% of the dividends, interest, etc. of the company. Normally, such a person has voting control, or more than 50% of the nominal value of the capital, but it is not unusual to find a class of shares which are non-voting but eligible for dividends or interest; (4)(b)(iii)

- ownership of capital: control is deemed to exist where a person has an absolute or limited interest in at least 50% of the nominal value of the company's shares. (4)(b)(iv)

The 4 situations outlined above are intended to cover the various circumstances in which a private company can be controlled by a person (or persons). Unless the company is under the control of 5 or fewer persons, the section does not apply, and the shares will be valued under the normal market value rules in ***section 26***.

28 Taxable value of a taxable gift or inheritance

Summary

This section shows how the taxable value of a gift or inheritance is to be calculated. Special provision is made in ***section 89*** for agricultural property. In the first instance, debts and other liabilities to which the gift or inheritance is subject are deducted from the market value. The balance remaining after deducting such debts and liabilities is called the "incumbrance-free value". If the donee or successor takes property comprised in the gift or inheritance as absolute owner, any consideration given by him/her is then deducted.

Where the donee or successor takes a limited interest in property, the following rules apply:

- the incumbrance-free value is first reduced for tax purposes according to the rules and tables in ***Schedule 1*** to the Act and to the age and sex of the donee or successor or the period of time for which the interest is to last, or otherwise, as the case requires, and

- from such reduced value, the consideration (if any) is deducted.

The section also sets out what debts may be deducted, and provides for the apportioning of debts and consideration in certain circumstances.

Details

The "incumbrance-free" value is the market value of property at the valuation date less the liabilities, costs and expenses that are properly payable out of the taxable gift or taxable inheritance. Where, for example, property is given to a person under a will and there is no incumbrance on the property, the market value of the property and the incumbrance-free value is the same. However, where property is given to a person subject to a loan secured on that property, which the donee or successor is obliged to take over, or there are costs or expenses which have to be paid out of the property, those liabilities can be deducted from the market value of the property in arriving at the incumbrance-free value. **(1)**

Where the donee or successor takes an absolute interest, the taxable value (i.e. the net amount on which he/she will pay tax) will be the incumbrance-free value if he/she gives nothing in return for the gift (i.e. if he/she gives no consideration). However, if he/she does give consideration, the taxable value will be the incumbrance-free value less the amount of the consideration. **(2)**

Consideration allowable may be either—

- a liability of the disponer taken over personally by the donee or successor (e.g. a loan owed by the disponer to a bank which the donee promises to pay);
- any other liability to which the gift or inheritance is subject under the terms of the disposition (e.g. a payment made by a donee to a third party).

Some liabilities can be both incumbrances on the property and consideration given by the donee or successor. Only one deduction will be given for such liabilities.

Future debts allowable as a deduction are discounted to arrive at their present value. Such debts would not, however, be deductible if they were only contingently payable (see ***subsection (5)(a)***). **(3)**

Where a donee or successor takes a limited interest (i.e. a life interest, or an interest for a period certain), the market value of the property of which the gift or inheritance consists is ascertained and any charges payable out of the property itself are deducted to arrive at the incumbrance-free value. The latter value is then looked at in the light of the rules and tables in ***Schedule 1*** and reduced accordingly. If consideration has been given, the consideration is deducted from the reduced value. **(4)**

Certain liabilities, costs and expenses are not deductible. They include—

- contingent liabilities. For example, A gives lands to B, subject to B paying €20,000 to C on C's marriage. B pays tax on the value of the lands without reference to the €20,000. If and when C marries and B must pay the €20,000, (5)(a)

an adjustment of tax may be claimed by the donee or successor;

- debts, etc. for which the donee or successor can claim reimbursement from any source; (5)(b)
- liabilities created by the beneficiary, e.g. a mortgage of his/her expectant interest created by a person who is entitled to a future interest; (5)(c)
- the capital acquisitions tax on the gift or inheritance, or the cost of raising the tax e.g. interest on a bank loan raised to pay the tax; (5)(d)
- incumbrances relating to property exempted from tax – such incumbrances cannot be used to reduce the taxable value of property which is not exempt; (5)(e)
- certain liabilities relating to foreign property comprised in the gift or inheritance, where the charge to tax is restricted to Irish property; (5)(f)
- foreign tax in respect of which relief against double taxation is given by way of a credit against Irish tax under ***section 106*** or ***107***. (5)(g)

Where the charge to tax is restricted to Irish property, only that part of the consideration (if any) which is attributable to the Irish property is allowed as a deduction. **(6)**

A deduction will not be made under the provisions of the section— **(7)**

- more than once for the same liability, costs, expenses or consideration in respect of all gifts or inheritances taken by the donee or successor from the disponer, or
- for any liability, costs, expenses or consideration, in respect of which a proportion of such liability, costs, expenses or consideration is allowed under ***section 89(2)(ii)*** or ***(iii)*** i.e. where debts or consideration have been restricted in proportion to any agricultural relief given, any amount disallowed cannot be deducted against any other property comprised in the gift or inheritance.

Where a liability, as defined, is attached to the subject matter of the gift or inheritance which has the effect of depriving the donee or successor of the benefit of the property or, more usually, of part of the property (e.g. a devise of a farm to A absolutely, subject to rights of residence, support and maintenance in favour of another person), the deduction to be made in this type of case is a "slice" of the property sufficient to provide for the liability. Thus, if the annual value of the rights is €10,000 per annum and if the annual value of the farm (i.e. the notional letting value) is €20,000, the deduction will be one-half of the value of the farm, which is the "appropriate part" within the meaning of ***section 5(5)***. **(8)**

When the rights cease, a claim for inheritance tax will arise on the benefit of the cesser of the rights under ***section 37***. The fraction of the property may not, however, be the same on the latter occasion because, if the farm is then more productive, it would yield an enhanced income.

The type of liability involved in ***subsection (8)*** is one which deprives the donee or **(9)**

successor of the full enjoyment of the gift or inheritance, or any proportion of it. In effect, the tax is postponed to the extent that the enjoyment of the property is postponed.

Where a person pays consideration now for a benefit to arise in the future, the deduction to be made for consideration will be proportionate to the value of the expectant interest at the date of settlement. **(10)**

Example

A agrees to settle property worth €200,000 on himself for life, with remainder to B, who, in consideration of the remainder interest, pays €50,000 immediately to A. If, on an actuarial calculation, the interest in expectancy given to B has a present value of €100,000, B will be treated, when the property becomes taxable in his/her hands (i.e. on his taking an interest in possession on A's death), as having paid consideration equal to one-half of the value of the inheritance i.e. he paid €50,000 for something worth €100,000. Thus, if the property is, on the life tenant's death, worth €300,000, a deduction of €150,000 will be allowed for partial consideration given by B.

No actuarial tables are provided in the Act for the valuation of an interest in expectancy. Normal actuarial principles will apply. The value will be based on the nature and income of the property and the age and health of the life tenant.

Where a liability is an incumbrance on any particular property, it should, as far as possible, be deducted from that property. **(11)**

29 Contingencies affecting gifts or inheritances

Summary

This section deals with a gift or inheritance given to a person which is to cease on the happening of a contingency. The contingency is ignored for the purpose of computing tax on that gift or inheritance. If the contingency happens, the tax will be adjusted as if the person took a limited interest for the actual period during which he/she enjoyed the property.

If, however, a substituted gift or inheritance is taken by a donee or successor on the happening of the contingency, that substituted gift or inheritance will be liable to tax.

Details

Where a gift or inheritance is given to a person which is to cease on the happening of a contingency (other than the revocation of a gift subject to a power of revocation under ***section 39***), the contingency is ignored for the purpose of calculating tax on that gift or inheritance. If, however, the contingency happens, tax is calculated on the basis that the donee or successor took an interest in the property for a period equal to the actual duration of his/her actual beneficial enjoyment of the property. **(1)**

Example

Property valued at €100,000 is given to a woman aged 63 for life or until the marriage of her eldest son. She is taxed on a life interest in €100,000 for a female aged 63 in accordance with ***Schedule 1*** as follows:

€100,000 x 0.6 = €60,000.

If her son marries after 10 years, the value of the benefit to the woman would be reduced to an interest in €100,000 for 10 years as follows:

€100,000 x 0.4913 = €49,130.

If, on the marriage of her son, she was given a substituted benefit (e.g. a sum of money) this would be taxable as a new gift or inheritance. **(2)**

30 Valuation date for tax purposes

Summary

This section lays down rules for ascertaining the date on which property, taken as a gift or an inheritance, is to be valued. In respect of gifts, the donee is normally entitled from the date of the gift and this date is the usual valuation date. For inheritances, the valuation date is, normally, the date of ascertainment of the residue or other benefit and of its retainer for the benefit of the successor.

Details

The date of the gift is the valuation date for a taxable gift except for the type of gift dealt with in ***subsection (7)*** i.e. a disposal of property which is comprised in an inheritance before the valuation date for the inheritance has arrived. **(1)**

The "date of the gift" is defined in ***section 2*** as the date of the event on which the donee becomes beneficially entitled in possession. **(2)**

The date of death of the person on whose death an inheritance is taken is prescribed as the valuation date in the following cases:

- a *donatio mortis causa* (i.e. a gift made in contemplation of death) which becomes effective only if that death occurs;

- an inheritance taken by a person when a disponer, who had power to revoke the disposition, dies without revoking it. This is the type of case referred to in ***section 39*** and, if the power ceases on the disponer's death, the property is deemed to vest beneficially in possession in the beneficiary "on a death" under ***section 3*** and is thus an inheritance.

In these exceptional cases, the "date of the inheritance", as defined in ***section 2***, is the same as the valuation date.

Where a gift is taken under a disposition made within 2 years of the disponer's death, it becomes an inheritance. As the donee clearly took the gift at the date of the gift, the valuation date for the inheritance will be the date of the gift (under ***subsection (1)***). This is the date on which the property is valued (as for gift tax), but interest on the inheritance tax, under the provisions of ***section 51(7)***, is not charged for the period from the valuation date to the date of death of the disponer. **(3)**

In the case of any other taxable inheritances (which covers most inheritances), the valuation date is the earliest of the following dates:

- the earliest date on which the successor's inheritance may be lawfully retained by him/her (i.e. set aside for him/her or given to him/her); (4)(a)
- the date of the actual retention (e.g. a son to whom lands are devised might enter the lands and retain them for his own benefit on the date of death of his father). If the estate was solvent, the later assent by the executor would be a mere formality; (4)(b)
- the date of delivery, payment, satisfaction or discharge of the inheritance (e.g. the actual date of payment or part-payment of a legacy – see ***subsection(5)***); (4)(c)
- payment, delivery, etc. to another person on behalf of the successor or to a person claiming in right of (e.g. his/her executor or assignee) or on behalf of (e.g. his/her guardian) the successor is equivalent to payment, delivery, etc. to the successor. (4)(d)

Where advances are made out of an inheritance, each payment in advance or part payment is treated as being retained on the date of such payment as if it were a separate inheritance. Thus, if a successor is entitled to a residuary bequest and receives shares worth €100,000 on 1 March 2004, cash amounting to €10,000 on 1 June 2004 and the balance on 1 August 2004, the valuation date will, respectively, be 1 March, 1 June and 1 August for the 3 separate parts of the inheritance. **(5)**

The Revenue Commissioners have power to determine (subject to an appeal under the provisions of ***subsection (9)*** below) the valuation date in respect of the whole or part of the inheritance. **(6)**

Where a person makes a gift of his/her share in the estate of a deceased person before the distribution has actually occurred, the valuation date of the gift will be the same as the valuation date of his/her inheritance. **(7)**

In doubtful cases, the Revenue Commissioners have the power to determine the valuation date by agreement with the taxpayer. **(8)**

The normal appeal procedures available under ***section 67*** apply in relation to an appeal against a determination issued by the Revenue Commissioners under ***subsection (6)***. **(9)**

PART 5 PROVISIONS RELATING TO GIFTS AND INHERITANCES

Overview

Special provisions dealing with express trusts (i.e. trusts created by deed or under a will) are provided for in this Part. Such trusts may be reconstituted or broken up, wholly or partly. To provide for these situations, the legislation includes provisions covering dealings with future interests (***section 32***), the release of limited interests (***section 33***), resettlements (***section 34***) and enlargement of interests (***section 35***).

This Part also contains provisions dealing with other matters dealing with gifts and inheritances as follows:

- the treatment of distributions from discretionary trusts,
- who the disponer is in the case of dispositions involving powers of appointment,
- the cesser of liabilities,
- dispositions enlarging the value of property,
- gifts subject to a power of revocation,
- the free use of property and interest-free loans,
- when an interest in an assurance policy becomes an interest in possession,
- provisions applying where section 98 of the Succession Act 1965 has effect,
- dispositions made by or to a company, and
- arrangements reducing the value of company shares.

31 Distributions from discretionary trusts

<u>Summary</u>

The section provides that distributions from discretionary trusts will be taxed as and when they are made. The Act does not impose mainstream tax on the initial settlement of property because no person takes a beneficial entitlement in possession in the property at that time.

<u>Details</u>

Where a person becomes beneficially entitled in possession to any benefit—

- under a discretionary trust, other than a discretionary trust referred to in ***paragraph (b)***, otherwise than for full consideration in money or money's worth paid by him/her, he/she is deemed to have taken a gift; (a)
- under a discretionary trust, otherwise than for full consideration in money or money's worth paid by him/her, created—
  - by will at any time, (b)(i)

  by a disposition, where the date of the disposition is on or after 1 April 1975 and within 2 years prior to the death of the disponer, or (b)(ii)

  by a disposition *inter vivos* and limited to come into operation on a death, (b)(iii)

he/she is deemed to have taken an inheritance.

32 Dealings with future interests

Summary

This section deals with the situation where a future interest in property is disposed of (whether or not for full consideration) before it becomes an interest in possession. The purchaser or transferee of that future interest is liable to capital acquisitions tax as if he/she was the donee or successor under the original disposition. However, tax is computed by reference to the relationship between the actual donee or successor under the original disposition.

Details

In ***subsection (2)***, "benefit" includes the benefit of the cesser of a liability referred to in ***section 37***. **(1)**

Where a person disposes of a future interest in property before it becomes an interest in possession so that when that interest comes into possession it is taken by a person other than the person who was entitled to the property under the original disposition, tax will be payable as if the latter person became entitled to the property. **(2)**

Example

A settles property on B for life and, on B's death, the property passes to C absolutely. While B is still alive, C assigns his interest to D. On B's death, tax is payable as if D took the property.

The person actually entitled to the property (D in the example) is the person made liable to deliver a return and pay the tax. However, the tax payable is computed by reference to the relationship of the donee or successor to the disponer.

The provisions of ***subsection (2)*** will not prejudice any charge to tax in respect of any gift or inheritance affecting the same property or any part of it under a disposition other **(3)**

than the disposition made by a person other than the original disponer.

Example

No tax is charged on the transfer by C of his future interest to D until D in the above example takes an interest in possession i.e. on B's death. However, 2 claims for tax have been postponed i.e.:

tax on the benefit taken by D (as transferee from C) from A (in effect, C's tax, payable by D);

- tax on the benefit taken by D directly from C (D's own tax).

There could, of course, be more than 2 such claims arising simultaneously if, for example, D also died before the life tenant, leaving his future interest to E, who also died before the life tenant leaving his interest to F, and so on.

[Where more than one charge to tax on the same property arises on the same event, the tax which is earlier in priority is allowed as a credit against the tax which is later in priority – see note on ***section 105***.]

33 Release of limited interests, etc.

<u>Summary</u>

This section deals with the termination of limited interests (e.g. life interests) before the time when such interests are limited to cease. Where the limited interest comes to an end before the event on which it is limited to cease happens (e.g. before the death of a life tenant), tax is payable as if the event had happened.

<u>Details</u>

"event" includes— **(1)**

- a death, and
- the expiration of a specified period.

Where an interest in property, which is limited by the disposition which created it to cease on an event, comes to an end before the time when that limited interest is to cease, tax will be payable as if the person who had the limited interest had died immediately before the coming to an end of the interest. **(2)**

3 common examples of early termination of limited interests are as follows:

- where the life tenant acquires a remainder interest;
- where the remainderman acquires the preceding life interest; and

- where the parties to a settlement agree to terminate the trust by dividing the trust funds between them.

The provisions of ***subsection (2)*** will not prejudice any charge to tax arising under a disposition made by a person other than the original disponer. [***Section 103*** ensures that property in respect of which tax is chargeable more than once on the same event will not be included more than once in respect of that event – see note on that section.] **(3)**

A double charge to tax does not arise where a person settles property on himself/herself for his/her life and that person surrenders his/her life interest during his/her lifetime. **(4)**

34 Settlement of an interest not in possession

Summary

This section provides that the tax payable on the cesser of a life interest will not be avoided by the remainderman having settled his/her interest on himself/herself.

Details

"event" has the same meaning as in ***section 33(1)***. **(1)**

The tax payable on the cesser of a life interest cannot be avoided where a person who has a future interest in property settled his/her remainder interest on himself/herself. **(2)**

Example

Where A settles property on B for life and, on B's death, to C absolutely. While B is still alive, C settles his future interest on himself for life and, on his death, to D absolutely. When B dies, the person becoming entitled in possession is C, but because he takes under his own disposition he might argue that he was entitled to exemption under ***section 83*** (which provides an exemption where a person settles property on himself/herself).

This subsection ensures that C in the example will be liable to tax on B's death.

The section also applies to "a liability within the meaning of ***section 28(9)***".

Example

A transfers property to B absolutely subject to the payment of an annuity equal to 1/3rd of the income from the property to C for life. B is taxed on the market value of the property less 1/3rd of that value (i.e. "the appropriate part" – see ***section 28(9)***). If, however, B had settled the property on himself for life, with remainder to his children, this postponed claim for tax could be defeated because when C (the annuitant) died, it could be said that the benefit of the cesser of the annuity came to B as life tenant under his own disposition and is, therefore, exempt from tax under ***section 83***.

The subsection ensures that the claims for tax under the original disposition will stand

as if the later disposition had not been made.

Where tax is payable under a disposition other than a disposition referred to in ***subsection (2)*** in respect of a later event (e.g. where a person settles a future interest in property on himself/herself for life and after his/her death to his/her children), the normal claims will arise when he/she dies and his/her children take inheritances from him/her. **(3)**

35 Enlargement of interests

Summary

This section deals with the situation where a person has a limited interest in property and that interest is enlarged to an absolute interest (e.g. because the owner of the limited interest takes a gift or inheritance of the remainder interest). The section provides that tax is charged on the enlarged interest on a taxable value equal to the difference between the value of the entire property at the valuation date and the value of the limited interest at that date.

The section does not apply where the enlargement occurs under the disposition under which the limited interest was created.

Details

Where a person who has a limited interest in property takes a further interest in that property and becomes the absolute owner, the value of the latter interest at the valuation date is reduced by the value of the limited interest. **(1)**

The value of the limited interest is valued in accordance with the Rules in ***Schedule 1*** for a limited interest in the whole property commencing on the date of the gift and ending on the last day of the original term of the limited interest.

"value" is defined for the purposes of ***subsection (1)(a)*** as the amount that would be the incumbrance-free value within the meaning of ***section 28(1)*** if the limited interest were taken as a taxable gift or taxable inheritance on the valuation date. **(2)**

The deduction provided for in ***subsection (2)*** does not apply where the enlargement of the limited interest occurs under the disposition under which the limited interest was created. **(3)**

36 Dispositions involving powers of appointment

Summary

This section provides that where a person has a general power of appointment over property, he/she will be treated as disponer on the exercise of, failure to exercise or release of, that power.

Where, however, he/she has a special power of appointment, on the exercise of, failure to exercise or release of, that power, the creator of the power is treated as the disponer.

Details

"general power of appointment" is defined in ***section 2(1)*** to include every power, right or authority whether exercisable only by will or otherwise which would enable the holder of the power to appoint or dispose of property to whoever he/she thinks fit or to obtain such power, right or authority (except powers which he/she has in his/her capacity as a trustee for example). **(1)**

Section 2(2) adds that this includes power to charge money on property and on the rights of a tenant in tail in possession, and provides that the person has such a power, even though he/she may be under some legal or physical disability.

"absolute owner" is defined in ***section 2(1)*** to include the interest of a person who has a general power of appointment.

The scheme of the Act is to treat a person who has a "general power of appointment" over property as if he/she were the absolute owner of that property. If a person is given such a power, he/she is taxed as having received the property absolutely. If he/she exercises the power (or allows it to go by default), the person then taking the property takes it from him/her as disponer as if he/she were the absolute owner of the property.

The disponer will be treated as the original settler and the disposition will be treated as the original settlement where the exercise of, the failure to exercise, or the release of, a general power of appointment form part of an arrangement whose sole or main purpose is the avoidance of CAT. In addition, the 6% and 1% charges imposed on certain discretionary trusts will not be prejudiced where the grant of a general power of appointment forms part of an arrangement whose sole or main purpose is the avoidance of CAT. **(1A) (1B) (1C)**

"special power of appointment" is defined in ***section 2(1)*** to mean a power of appointment which is not a "general power of appointment" (as defined). A power of appointment is an authority, as distinct from ownership, given to a person to nominate the persons who are to receive property beneficially. An example of a special power of appointment, in the sense in which it is used in the Act, would be where A gives property to trustees to hold on trust for B for life and, on B's death, for such of A's children as the trustees by will appoint. When one of A's children takes a benefit under an appointment by B by will, he/she will be treated as taking under A's disposition and from A as disponer. **(2)**

37 Cesser of liabilities

Summary

This section provides that where property is taken by a donee or successor subject to a liability, tax will be payable by the person benefiting when that liability ceases.

Details

"appropriate part" has the same meaning as it has in ***section 5(5)***. **(1)**

Where property is given to A, subject to an annuity to B for his/her life, the benefit taken by A is subject to a liability. It is provided by ***section 28(8)*** that there may be deducted, in calculating the taxable value of A's benefit, the appropriate part of the property required to produce B's annuity. If the total property taken by A is valued at €500,000, which produces an income of €12,000 per annum and B's annuity was €6,000 per annum, "the appropriate part" calculated as follows would be deducted from A's benefit: **(2)**

$$\frac{€\,6,000}{€\,12,000} \times €\,500,000 = €\,250,000$$

When B dies, A will be taxed on the benefit accruing to him by reason of the cesser of the annuity.

The value of the cesser of the liability is calculated at the date when the liability ceases where the liability is charged on the property. It should be noted that the value of the "appropriate part" at the date of the cesser of the liability will be different from the value of that liability at the date when it commenced.

Where the liability is not charged or secured by any property at the time of its cesser, the value of the cesser of the liability is deemed to consist of a notional sum which would produce an annual income equal to the annual value of the liability. This notional sum is calculated in accordance with ***section 5(2)(b)*** i.e. on the basis of the yield from the most recent Government security with a redemption date of not less than 10 years after the date it was issued.

If the yield were 6%, for instance, the notional capital attributed to an annuity of €6,000 would be €100,000.

The notional capital is deemed not to be situated in the State at the date of the gift or at the date of the inheritance. This ensures that tax is not payable where the disponer was not domiciled in the State at the date of the disposition, where that date was before 1 December 1999. This is also the case where the disponer or the donee/successor are not resident or not ordinarily resident in the State at the date of the disposition, where that date is on or after 1 December 1999 (see note on ***section 5(3)*** as regards the reason for this provision). **(3)**

38 Disposition enlarging value of property

Summary

This section deals with the situation where a person takes a beneficial interest in property which has the effect of increasing the value of any other property which he/she has already received from the same disponer. The increase in the value of the original property is deemed to be a gift or inheritance, as the case may be, taken on the date when he/she received the additional property.

The object of the section is to prevent the splitting of property for tax avoidance purposes in cases where the market value of the whole property is greater than the sum of its parts.

Details

"company", in ***subsection (4)***, means a private company within the meaning of ***section 27***. **(1)**

"property" does not include any property to which a donee or successor became beneficially entitled in possession prior to 28 February 1969. **(2)**

Where the taking by any person of a beneficial interest in any property (referred to as the additional property) under any disposition made by a disponer has the effect of increasing the value of any other property (referred to as the original property) to which that person is beneficially entitled in possession, and which has been derived from the same disponer, the following provisions apply: **(3)**

- the increase in value so effected is deemed to be a gift or an inheritance, as the case may be, arising under that disposition and taken by that person, as donee or successor, from that disponer, at the time he/she took the beneficial interest in the additional property; (a)
- the original property is treated as having been increased in value if the market value of that property at the time referred to in ***paragraph (a)*** would be greater if it was sold as part of an aggregate of the original property and the additional property rather than as a single item of property. The increase in value for the purposes of the section will be the amount by which the market value of the original property, if sold at that time as part of such aggregate, would be greater than the amount of the market value of that property if sold at that time as a single item of property; (b)
- the additional property will, for the purpose of determining its market value, be deemed to be part of an aggregate of the original property and the additional property; and (c)
- the market value of any property which is to be valued as part of an aggregate of property will be ascertained as being so much of the market value of such aggregate as may reasonably be attributed to that part. (d)

The re-valuation of the original gift will apply even if, at the date of the second transfer, the beneficiary has disposed of the original property within the previous 5 years (otherwise than for full consideration in money or money's worth) or has disposed of it to a private company of which he/she has control within the meaning of ***section 27(4)(b)***. **(4)**

39 Gift subject to power of revocation

If a person makes a gift of property to a donee but reserves to himself/herself the power to revoke the gift, this section treats the property as remaining in the disponer until

he/she releases the power of revocation, or until he/she dies (at which stage the power of revocation lapses). In that case, the donee will be taxed as becoming beneficially entitled in possession. If, during the period between the original disposition and the release or lapse of the power of revocation, the donee has the free use of the property, he/she will be taxed as receiving a gift under ***section 40*** in each year of the value of the use of the property for that year.

40 Free use of property, free loans, etc.

Summary

This section provides that where a person, who is not beneficially entitled in possession to property, is allowed the free use of the property or takes an interest-free loan, he/she will be taxed on the basis that he/she takes a gift, in each year, of the value of the use of the property for that year. The section will apply, for example, to persons who are objects of a discretionary trust and are allowed the free use of trust assets and to a person occupying property under a disposition which may be revoked (see ***section 39***).

Details

(1) "relevant period", in relation to any use, occupation or enjoyment of property, means the period of 12 months ending on 31 December in each year.

(2) If a person who is not beneficially entitled to property in possession is allowed to have the use, occupation or enjoyment of any property other than for full consideration in money or money's worth, that person will be deemed to take a gift in each relevant period (see below) during the whole or part of which he/she is allowed to have such use, occupation or enjoyment.

(3) A gift referred to in ***subsection (2)*** is deemed to consist of a sum equal to the difference between the amount of any consideration, in money or money's worth, given by the person referred to in ***subsection (2)*** for such use, occupation or enjoyment and the best price obtainable in the open market for such use, occupation or enjoyment.

(4) The gift or inheritance is treated as being taken on the last day of the relevant period i.e. 31 December or, if earlier, on the date of the cesser of the use, occupation or enjoyment.

(5) Where the use, occupation or enjoyment of property is allowed to a person who is not beneficially entitled in possession to that property under a disposition—

- made by will; (a)
- where the date of the disposition is on or after 1 April 1975 and within 2 years prior to the date of death of the disponer; or (b)
- which is a disposition *inter vivos* and the use, occupation and enjoyment is had by that person after the cesser of another person's life interest, (c)

references in ***subsections (2)***, ***(3)*** and ***(4)*** to gifts are treated as references to inheritances.

The sum referred to in ***subsection (3)*** is deemed not to be situated in the State at the date of the gift or at the date of the inheritance where the disponer was not domiciled in the State at that date and where that date is before 1 December 1999. This is also the case where the disponer or the donee/successor are not resident or ordinarily resident in the State on the relevant date, where that date is on or after 1 December 1999. In the absence of this provision, the gift deemed to have been taken under ***subsection (3)*** would be regarded as being located in this country and might be taxable. **(6)**

41 When interest in assurance policy becomes interest in possession

Summary

This section is designed to prevent an assurance policy being taxed before benefits become payable under it. Tax is payable on the proceeds of the policy if they become the subject of a gift or inheritance.

Details

For the purposes of the Act, an interest in a life assurance policy will be deemed to become an interest in possession when either— **(1)**

- the policy matures, or
- prior to the maturing of the policy, the policy is surrendered to the insurer for a consideration in money or money's worth.

However, if during the currency of the policy, the insurer makes a payment of money or money's worth in full or partial discharge of the policy, the interest will be deemed to have come into possession to the extent of such payment.

Contracts for deferred annuities are treated in the same way. The annuitant is treated as coming into beneficial possession on the date of the first payment under the policy. **(2)**

42 Provisions to apply where section 98 of Succession Act 1965 has effect

Summary

This section deals with benefits arising under section 98 of the Succession Act 1965. Under that section, a benefit by will to the testator's child or other issue is (subject to any contrary intention in the will) preserved from lapse where the beneficiary predeceases the testator, if the beneficiary leaves issue living at the testator's death. The benefit takes effect as if the beneficiary had died immediately after the testator and the property devolves under the beneficiary's will or intestacy. This section prevents a double charge to tax in such cases. The person who actually takes the benefit is taxed as if he/she took that benefit from the testator.

Details

Under the doctrine of lapse, if a beneficiary under a will dies before the testator, the **(1)**

gift to him/her lapses and falls into the residue. Section 98 of the Succession Act 1965 makes an exception in the following type of case:

A testator, by will, gives a legacy to his/her child or other issue. The legatee dies before the testator. The legatee leaves children who survive the testator. Section 98 provides (unless the will shows a contrary intention) that where that happens, the legacy does not lapse, but takes effect as if the death of the legatee had happened immediately after the death of the testator.

Section 98 ensures that the legacy goes to the legatee's estate, so that it then passes under the legatee's will or intestacy.

If no provision were made to the contrary, there would be 2 claims for tax arising in such a case, i.e.:

- tax on the benefit taken by the legatee from the testator, and
- tax on the benefit taken from the legatee by the beneficiaries under his/her will or intestacy.

This section provides that only one claim for tax will arise and that tax will be on a benefit taken by the ultimate beneficiaries from the original testator, as disponer.

The person ultimately benefiting will be deemed to take an inheritance from the testator, as disponer, and not from the deceased child. **(2)**

43 Disposition by or to a company

Summary

This section provides that, in the event of a disposition being made, or a gift or an inheritance being taken, by a private company as defined in ***section 27***, or in the event of consideration being paid to or by the company, the beneficial owners of shares and of certain entitlements in the company will be treated as disponers, donees or successors or, as paying or receiving the consideration, as the case may be, in the proportions as the specified amounts (as defined) relating to their beneficial interest in the shares and entitlements bear to each other.

Where shares and entitlements are held in trust and there is no ascertainable beneficial owner, a disposition made, or consideration paid, by a company is considered to have been made or paid by the disponer in relation to the trust property.

Details

"company" means a private company within the meaning of ***section 27***; **(1)**

"market value" means—

- in the case of a person's beneficial interest in shares and entitlements, the

market value of that interest on the date of the payment, disposition, gift or inheritance, as the case may be, ascertained by reference to the market value on that date of the shares and entitlements in which the interest subsists, and

- in the case of a share in which a beneficial interest subsists, the market value of that share ascertained in the manner described in ***section 27*** as if, on the date on which the market value is to be ascertained, it formed an apportioned part of the market value of a group of shares consisting of all the shares in the company issued and outstanding on that date;

"share" has the same meaning as it has in ***section 27***;

"specified amount", in relation to a person's beneficial interest in shares and entitlements, means—

- in the case of consideration paid, or a disposition made, by a company, a nil amount or, if greater, the amount by which the market value of the beneficial interest was decreased as a result of the payment of the consideration or the making of the disposition, or

- in the case of consideration, or a gift, or an inheritance taken by the company, a nil amount or, if greater, the amount by which the market value of the beneficial interest was increased as a result of the taking of the consideration, gift or inheritance (as the case may be).

A disposition made, or consideration paid, by a private company is to be treated as made or paid by the ultimate shareholders and by certain creditors. **(2)**

A gift or inheritance, or consideration taken, by a private company is to be treated as taken or paid by the ultimate shareholders and by certain creditors.

The apportionment of the benefit given or received by the company is based on the proportions which the specified amounts relating to the shareholdings bear to each other.

For the purposes of ***subsection (2)***; all acts, omissions and receipts of the company are deemed to be those of the beneficial owners of the shares and entitlements, referred to in ***subsection (2)***; in the company, in the proportions mentioned in that subsection. **(3)**

Where one of the shareholders is itself a company, the company is looked through in the same way as in ***subsection (2)***. **(4)**

Where the shares in question are held in a discretionary trust, consideration paid, or a disposition made, by the company in question is treated as paid or made, as the case may be, by the person or persons who settled the property in the discretionary trust. **(5)**

44 Arrangements reducing value of company shares

<u>Summary</u>

This section counteracts the avoidance of capital acquisitions tax by transferring the

rights attaching to particular shares. The value of the rights transferred is deemed to be a gift or inheritance, as the case may be.

Details

“arrangement” means an arrangement which is made on or after 25 January 1989, and includes— **(1)**

- any act or omission by a person or by the trustees of a disposition;
- any act or omission by any person having an interest in shares in the company;
- the passing by any company of a resolution; or
- any combination of acts, omissions or resolutions referred to above;

“company” means a private company within the meaning assigned by ***section 27***;

“event” includes—

- a death, and
- the expiration of a specified period;

“related shares” means the shares in a company, the market value of which shares is increased by any arrangement;

“related trust” has the meaning assigned to it by ***subsections (3)*** and *(5)*;

“specified amount” means an amount equal to the difference between—

- the market value of shares in a company immediately before an arrangement is made and ascertained under the provisions of ***section 27*** as if each share were a share in a company controlled by the disponer concerned, and
- the market value of those shares, or of property representing those shares, immediately after the arrangement is made and ascertained under the provisions of ***section 26***.

Any such specified amount is deemed to be situated where the private company is incorporated.

A reference to a company controlled by the disponer concerned is a reference to a company that is under the control of one or more of the following: **(2)**

- that disponer;
- the relatives of that disponer;

- nominees of relatives of that disponer; and
- the trustees of a settlement whose objects include that disponer or relatives of that disponer.

A company which is so controlled by that disponer is regarded as being itself a relative of that disponer.

(3) Where the absolute owner of shares in a company enters into an arrangement after which the shares are reduced in value, any corresponding increase in value in related shares (as defined) will be deemed to be a gift or inheritance given by him/her to the owners of those related shares. The amount of the increase is called the "specified amount".

(4) If the property in a trust in which a person has a limited interest includes shares in a company, the trust is deemed to have held 2 types of property in relation to those shares, namely—

- the specified amount, and
- the shares as reduced.

Tax will be payable in respect of the specified amount as if the limited interest had ceased and the owners of the related shares had taken a gift or inheritance of the specified amount from the disponer in relation to the trust.

(5) Where value is shifted out of shares comprised in a discretionary trust, the following provisions apply:

- if the shares the value of which is increased (the "related shares") are owned beneficially, the beneficial owners of the related shares are deemed to have taken a benefit;
- if the related shares are held by a discretionary trust (the "related trust"), the disponer in relation to the related trust is deemed to have taken a benefit.

(6) The provisions of ***subsections*** *(3)*, *(4)* and *(5)* will not prejudice any charge for tax under any disposition on or after the making of an arrangement referred to in those subsections.

(7) Where the shares in a company, which are held in trust under a disposition made by any disponer, are related shares by reason of any arrangement referred to in the section, any gift or inheritance taken under the disposition on or after the arrangement is made and comprising those related shares, or property representing those related shares, will be deemed to be taken from that disponer.

(8) As regards the tax due and payable in respect of a gift or inheritance taken by virtue of this subsection under a discretionary trust—

- the disponer in relation to the related trust will not be a person primarily accountable for the payment of such tax, and
- a person who is a trustee of the related trust for the time being at the date of the gift or at the date of the inheritance, or at any date subsequent to that date, will be the person primarily accountable.

A person who is accountable for the payment of tax in respect of any specified amount, or part of a specified amount, taken as a gift or an inheritance under the section has power to raise the amount of tax or interest and any expenses properly paid or incurred by him/her in respect of such tax or interest, by the sale or mortgage of, or a terminable charge on, the related shares for the purpose of payment of the tax or raising the amount of tax when it has already been paid. **(9)**

Tax due and payable in respect of a taxable gift or inheritance taken under the section remains a charge on the related shares in the relevant company. **(10)**

Where related shares are subject to a discretionary trust immediately after an arrangement is made in accordance with the provisions of the section, the amount by which the market value of such shares is increased by such arrangement will be property for the purposes of a charge for tax arising by reason of the provisions of ***section 15***. **(11)**

If shares are redeemed under an arrangement made on or after 5 May 1993 to reduce the value of shares, any property representing shares is deemed, immediately after the arrangement, to have a market value of nil. This provision does not apply, however, where the redeemed shares are actually represented by property (e.g. the proceeds from the sale of the shares). **(12)**

PART 6 RETURNS AND ASSESSMENTS

Overview

This Part deals with matters such as the persons who are accountable for the payment of tax, the retention of records for a certain period of time, the delivery of returns, the expression of doubt on a particular technical point in a return, the assessment of tax, the signing of returns, affidavits and accounts and the computation of tax.

45 Accountable persons

Summary

This section identifies the persons liable for payment of tax. The liability rests on the donee or successor (or transferee, in any case where the provisions of ***section 32*** apply). These persons have the power to raise the amount of tax and any expenses properly paid or incurred by that person by the sale or mortgage of, or a terminable charge on, the property or any part of the property.

The section also gives a person authorised by the Revenue Commissioners the right to inspect records (including records held in electronic form) in the custody of any public officer and to copy and take notes and extracts as that person considers necessary.

Details

The liability for the payment of tax rests on the donee or successor. However, in the case dealt with in ***section 32(2)*** (i.e. where the benefit is transferred to a transferee by the beneficiary before it becomes an interest in possession), the primary liability rests on the transferee. **(1)**

The tax will be recoverable from the persons referred to in ***subsection (1)*** and the personal representatives of such persons, where those persons have died, on whom the Revenue Commissioners have served notice in writing of the assessment of tax under ***section 49(4).*** **(2)**

The persons referred to in ***subsection (1)*** and the personal representatives of such persons have power to raise the amount of such tax and any expenses properly paid or incurred by that person in respect of raising the amount of such tax by the sale or mortgage of, or a terminable charge on, the property or any part of the property. **(3)**

A person who is authorised by the Revenue Commissioners can inspect any public or official records (including any records held in electronic form) that may tend to secure the tax, or to prove or lead to the discovery of any fraud or omission in relation to the tax. **(4)**

45A Obligation to retain certain records

Summary

The purpose of this section is threefold, viz.:

- to oblige accountable persons to retain certain records for the purposes of making a gift or inheritance tax return;
- to describe the type of records required to be retained;
- to prescribe the length of time for which these records must be retained.

This section is modelled on similar provisions found in the Taxes Consolidation Act 1997. The section came into effect by way of Ministerial Order on 1 October 2003.

Details

The records covered by the section include any records relating to any benefit taken under any disposition, any liabilities, costs or expenses or to any exemption or relief. **(1)**

An accountable person will be obliged to retain, by himself/herself or by another person on his/her behalf, such records as are required to enable a true return or an additional return for capital acquisitions tax purposes to be made. **(2)**

The records must be retained in written form in an official language of the State or by electronic or other means provided it complies with the requirements of section 887(2) of the Taxes Consolidation Act 1997, which mainly requires that the records can be reproduced in an intelligible form. **(3)**

The records must be retained for 6 years from the valuation date of the gift or inheritance (including an inheritance deemed to be taken by a discretionary trust under ***sections 15*** and ***20***). However, where there is a delay in filing a gift or inheritance tax return, the period of retention is 6 years from the date of receipt of the return by the Revenue Commissioners. This is also the retention period where the Revenue Commissioners request a return, additional return or statement in certain circumstances from a person or, where an accountable person makes an additional return if they discover an error in the original return. **(4)**

A penalty of €3,000 is imposed on any person who fails to comply with the requirements of the section, but any person who is not chargeable to tax in respect of the gift or inheritance will not be liable to such a penalty. **(5)**

45AA Liability of certain persons in respect of non-resident beneficiaries

Summary

This section provides that the personal representatives or the solicitor required to be appointed to administer a deceased person's estate, where the personal representatives are resident outside the State, will be liable to inheritance tax to the same extent as the

non-resident beneficiaries.

Details

(1) The personal representatives or any of the personal representatives, where there is more than one, and a solicitor referred to in ***section 48(10)*** who is required to administer the estate of a deceased person where the personal representative(s) is/are not resident in the State will be liable to inheritance tax to the same extent as the beneficiaries, where such beneficiaries are not resident in the State.

(2) ***Subsection (1)*** will not apply where a liability to inheritance tax arises by virtue of the fact that a non-resident beneficiary has not disclosed that he or she has received a prior aggregable gift or inheritance and the personal representative or the solicitor referred to in ***section 48(10)*** has made reasonable enquiries regarding such gifts and inheritances and has acted in good faith.

(3) The personal representatives or the solicitor referred to in ***section 48(10)*** will be liable for the inheritance tax in respect of the non-resident beneficiaries to the extent that they have control of the property or would have control of such property but for their own neglect or default.

(4) The persons referred to in ***subsection (3)* —**

- will be entitled to retain so much of the property as may be required to pay the tax in respect of the non-resident beneficiaries, and
- will have the power, whether the property is or is not vested in that person, to raise the amount of such tax, and any expenses properly paid or incurred by those persons in respect of the raising the amount of such tax, by the sale or mortgage of, or a terminable charge on, that property or any part of that property.

46 Delivery of returns

Summary

This section provides that a person who is accountable for the payment of tax must deliver a return and assess and pay the tax in respect of a taxable gift or a taxable inheritance on or before 31 October in the relevant year and imposes an obligation on a person to deliver a return if requested to do so by the Revenue Commissioners, even if no benefit has been received. A donor of a gift or a disponer in relation to a discretionary trust must make a return to the Revenue Commissioners in certain circumstances.

The section also contains provisions dealing with the payment of tax by means of instalments and by means of Government securities and the inspection of property and records.

The period within which the Revenue Commissioners can make enquiries or authorise inspections is being restricted to a period of 4 years from the date of receipt of the return. This will not apply where fraud or neglect is involved.

Details

A reference in the section to a gift or a taxable gift generally includes a reference to an inheritance or a taxable inheritance, as the case may be and a reference to a donee includes a reference to a successor. **(1)**

Any person who is accountable for the payment of tax under ***section 45(1)***, or trustees of a discretionary trust to which the 6% and 1% charges apply, are obliged to deliver a self-assessed return and pay the relevant tax. The return must contain details of all the property comprised in the gift or inheritance, an estimate of the market value of such property on the valuation date and such particulars as may be relevant to the assessment of the tax. **(2)**

For the purposes of ***subsection (2)*** (other than in respect of the 6% and 1% charges), where the relevant date occurs — **(2A)**

- in the period from 1 January to 31 August in any year, tax shall be paid and a return shall be delivered on or before 31 October in that year, and
- in the period from 1 September to 31 December in any year, tax shall be paid and a return shall be delivered on or before 31 October in the following year.

Subsection (2A) will only apply in relation to tax to be paid and returns to be delivered as respects valuation dates arising on or after such day as may be appointed by an order made by the Revenue Commissioners. (The 14th June 2010 is appointed as the relevant day – see Capital Acquisitions Tax Consolidation Act 2003 (Section 46(2B)) (Appointed Day) Order 2010.) **(2B)**

In the case of discretionary trust tax , returns shall be delivered and tax paid within 4 months of the valuation date. **(2C)**

Tax can be paid by instalments or by way of transfer of qualifying Government securities. Where tax is being paid by instalments, the obligation which an accountable person has to pay tax will be met if he/she pays the tax and interest which is due at the date of the assessment as well as paying the further instalments of tax and interest when they fall due. **(3)**

A return to be delivered in accordance with subsection (2A) must be delivered electronically except where a relief or an exemption (other than the exemption for small gifts in ***section 69***) is not being claimed and the interest taken by a person is an absolute interest which is not subject to any conditions or restrictions. **(3A)**

With regard to any person who is primarily accountable for the payment of tax, the rule is that he/she is obliged to deliver a self-assessed return when, if the total taxable value of all gifts or inheritances taken by that person, which have the same group threshold as the current gift or inheritance, exceeds 80% of his/her tax-free threshold (known as the “threshold amount”) or when he/she is required by notice in writing to deliver a self-assessed return. When required by notice in writing to deliver a return, the person primarily accountable must comply with the requirement within 30 days of the date of the notice. **(4), (5)**

[This subsection has been deleted by section 147 of the Finance Act 2010.] **(6)**

The Revenue Commissioners have the right to serve notice on any accountable person requiring him/her to furnish particulars and evidence which they consider relevant to the assessment of tax in respect of a gift or inheritance. The person who is accountable for the payment of tax must comply with the requirement within 30 days of the date of the notice. **(7)(a)**

Any authorised officer of the Revenue Commissioners has the right to inspect any property comprised in a gift or inheritance, and any books, records, accounts or other documents relating to any property which may be relevant to the assessment of tax. **(7)(b)**

The period within which the Revenue Commissioners can initiate enquiries or authorise inspections under ***subsection*** ***(7)(a)*** or ***(7)(b)*** is being restricted to 4 years from the date of receipt of a gift, inheritance or discretionary trust tax return. This provision came into effect on 1 January 2005. **(7A)**

The restriction referred to in ***subsection (7A)*** does not apply where fraud or neglect is involved. For the purposes of this subsection, neglect includes a failure to deliver a correct return. This provision came into effect on 1 January 2005. **(7B)**

The Revenue Commissioners may serve a notice in writing requiring an accountable person who has already made a defective return to— **(8)**

- deliver an additional self-assessment return,
- assess the correct amount of tax, and
- pay any outstanding amount due.

The person who is accountable for the payment of tax must comply with the terms of the notice within 30 days of the date of that notice. Provision is made for the payment of any additional amount due under the subsection by instalments or by the transfer of Government securities to the Minister for Finance.

Any person accountable for the payment of tax who has already delivered a defective return must, within 3 months of becoming aware of the defect— **(9)**

- deliver an additional self-assessed return,
- assess the correct amount of tax, and
- pay any outstanding amount due.

Provision is made for the payment of any additional amount due under the subsection by instalments or by the transfer of Government securities to the Minister for Finance.

A payment of tax (other than a payment of tax by means of the transfer of Government securities to the Minister for Finance) by a person who is accountable for payment of tax in respect of an assessment of tax made by him/her must accompany the return and be paid to the Collector-General of the Revenue Commissioners. **(10)**

An assessment or payment of tax, made under the provisions of the section by a person **(11)**

who is accountable for the payment of tax, must include interest payable in accordance with ***section 51***.

Any person must, if required by written notice to do so, deliver a return within 30 days of the date of the notice, showing details of every taxable gift or inheritance taken by that person during the period specified in the notice or, as the case may be, indicating that that person has taken no taxable gift during that period. **(12)**

A disponer of a gift or inheritance to which ***subsection (14)*** applies is obliged to deliver a return where the Revenue Commissioners issue a notice to him/her, within such time as may be specified in the notice — **(13)**

- of all the property comprised in the gift on the valuation date,
- of an estimate of the market value of such property on the valuation date, and
- of such particulars as may be relevant to the assessment of tax in respect of the gift.

The obligation to make a return will arise under ***subsection (13)*** if the total taxable value of all gifts and inheritances taken by the donee from the same disponer on or after 5 December 1991 exceeds 80% of the relevant group threshold applying to the gift or inheritance. This obligation arises even though a disponer has not been requested by the Revenue Commissioners to deliver a return. **(14)**

A disponer who is resident or ordinarily resident in the State on the date the trust was created is obliged to make a return to the Revenue Commissioners within 4 months of the creation of a discretionary trust of— **(15)**

- the terms of the discretionary trust,
- the names and addresses of the trustees and objects of the discretionary trust, and
- an estimate of the market value of the property becoming subject to the discretionary trust.

A non-Irish domiciled person will not be treated as resident or ordinarily resident in the State on the date the trust was created unless that person has been resident in the State for the 5 consecutive years of assessment immediately preceding the year of assessment in which that date falls. **(16)**

46A Expression of doubt

Summary

This section provides for an expression of doubt facility on the gift or inheritance tax return form or on the discretionary trust tax return form.

An expression of doubt enables a taxpayer to express doubt in relation to any item on the return form which affects the quantum of tax which they are due to pay in respect of that return. This facility is also available to taxpayers in relation to the direct taxes and value added tax.

The section came into effect by way of Ministerial Order on 1 October 2003.

Details

A person in doubt as to the correct application of the law or the treatment, for tax purposes, of any matter to be included in a return or an additional return may bring this matter to the attention of the Revenue Commissioners by expressing the doubt on the return or additional return. In addition, a person expressing doubt on any matter will be treated as having made a full and true disclosure with regard to the matter about which there is doubt. **(1)**

A person expressing doubt in relation to a particular matter will not be penalised with interest under the interest provisions contained in ***section 51(2)*** where it transpires that additional tax is due, on condition that that additional tax is paid within 30 days of the date on which the Revenue Commissioners notify the taxpayer of their final decision on the matter. **(2)**

Even though an expression of doubt is made, interest will be payable on any additional tax where the Revenue Commissioners do not accept as genuine the expression of doubt. This will apply where the Revenue Commissioners believe that the person expressing the doubt was acting with a view to tax evasion or avoidance. **(3)**

Where the Revenue Commissioners do not accept an expression of doubt as genuine, they will notify the person who is accountable for the payment of tax accordingly within 30 days of receiving the return or additional return upon which the expression of doubt has been made. That person must account for any additional tax and interest on that tax. **(4)**

The person who is accountable for the payment of tax has a right of appeal against a decision of the Revenue Commissioners that an expression of doubt is not genuine. **(5)**

47 Signing of returns, etc.

Summary

This section provides that returns should be made on a form provided or approved of by the Revenue Commissioners and be signed by the person who is accountable for the payment of tax. The Revenue Commissioners may require a return to be sworn or to be affirmed or may accept a return which has not been signed.

Details

A return or an additional return required to be delivered under the Act must be signed by the person accountable for the payment of tax who delivers the return or the additional return. The return must include a declaration by the person signing it that the return or additional return is, to the best of his/her knowledge, information and belief, **(1), (2)**

correct and complete.

The Revenue Commissioners may accept a return or additional return which has not been signed by the person accountable for the payment of tax. This enables the return to be signed by an agent (e.g. a solicitor or an accountant). **(3)**

A return, additional return, affidavit, additional affidavit, account or additional account delivered to the Revenue Commissioners under the Act must be made on a form approved by them. **(4)**

Persons who are required to make an oath for the purposes of the Act are facilitated by allowing the oath to be administered by a Revenue official or a Peace Commissioner, if it is inconvenient for the person concerned to go to a Commissioner of Oaths. **(5)**

For the purposes of the section, references to an oath will be construed as references to an affirmation and references in the section to the administration or making of an oath will be construed accordingly. **(6)**

48 Affidavits and accounts

Summary

This section deals with the Inland Revenue affidavit required on application for a grant of probate or letters of administration. The information required by the Revenue Commissioners includes details of the assets of a deceased person and of all gifts made by him/her within 2 years of his/her death, details of all inheritances arising on his/her death, the names and addresses of the successors and their relationship to the deceased person, and such other information as may be required. Details of the world-wide assets of a deceased person on the date of that person's death must be included in the Inland Revenue affidavit in two situations. The first situation is where the deceased person was, on the date of his or her death, resident or ordinarily resident in the State and was also domiciled here on that date. The second situation is where a non-Irish domiciled person was resident or ordinarily resident in the State on the date of his or her death and had been resident here for the 5 consecutive years of assessment immediately preceding the year of assessment in which the date of death falls.

An account must also be delivered by the trustees of a settlement under which the deceased person had a limited interest and the account, in this case, must contain details of all inheritances arising under that settlement, the names and addresses of the successors and their relationship to the person who made the settlement and such other information as may be required.

If any material error or omission occurs in an affidavit or account, an additional affidavit or additional account must be delivered.

The Inland Revenue affidavit and the statements, accounts and additional affidavits should be submitted directly to the Probate Office in duplicate.

Details

"Inland Revenue affidavit" means the document completed by or on behalf of the intended applicants for probate or letters of administration and sworn by them before a **(1)**

commissioner for oaths, a practicing solicitor or a court clerk;

"Probate Office" includes a district probate registry.

The Inland Revenue affidavit is a statement, verified on oath, setting out the details and value of the deceased person's assets and his/her debts, together with certain information as to property in which he/she had a life interest, etc.

The details which must be included in the Inland Revenue affidavit are as follows:

- details of the world-wide assets of a deceased person on the date of that person's death must be included in an Inland Revenue affidavit in 2 situations. The first situation is where a deceased person was resident or ordinarily resident in the State on the date of his or her death and was also domiciled here on that date. The second situation is where a deceased person was non-Irish domiciled but where that person was resident or ordinarily resident here on the date of his or her death and had been resident here for the 5 consecutive years of assessment preceding the year of assessment in which the date of death falls. These provisions apply where the beneficial ownership of those assets is affected on the death of a deceased person by— (2)(a)

  his/her will;

  the rules for distribution on intestacy; or

  Part IX or section 56 of the Succession Act 1965;

- details of any property which was the subject matter of a disposition made by the deceased person during his/her lifetime, where the date of the disposition was within 2 years prior to his/her death, or of a *donatio mortis causa*; (2)(b)

- details of the inheritances arising under the will or intestacy of the deceased person or under Part IX or section 56 of the Succession Act 1965, or under the analogous law of another territory, together with a copy of the will; (2)(c)

- particulars of the inheritances (including the property comprised in the inheritance), other than those referred to in ***paragraphs (b)*** and ***(c)***, arising on the death of the deceased person; (2)(d)

- the name and address of each person who takes an inheritance on the death of the deceased person and his/her relationship to that deceased person; and (2)(e)

- such other particulars as the Revenue Commissioners may require for the purposes of the Act. (2)(f)

Where the interest of the deceased person was a limited interest, the trustees of the property in which the limited interest subsisted are obliged to deliver an account which contains the following particulars: **(3)**

- details of each inheritance arising on the death of the deceased person under the disposition under which the limited interest of the deceased person arose, including the name and address of each person taking such inheritance and his/her relationship to the disponer; and
- such other particulars as the Revenue Commissioners may require for the purposes of the Act.

The persons liable to deliver an affidavit or an account must deliver an additional affidavit or an additional account where an error or omission in the original affidavit or account requires correction. **(4)**

The Inland Revenue affidavit and the statements, accounts and additional affidavits referred to in ***subsections (2)*** to ***(4)*** should be delivered directly to the Probate Office unless they are submitted in accordance with regulations made under ***subsection (8).*** **(5)**

The Probate Office will transmit to the Revenue Commissioners such information as is held in electronic form by that Office and is relevant for the purposes of the Act as soon as possible after probate or letters of administration has or have been issued. **(6)**

The Probate Office will send one copy of the Inland Revenue affidavit referred to in ***subsection (5)*** together with a copy of the will (if any) to the Revenue Commissioners as soon as possible after probate or letters of administration has or have been issued unless these documents are submitted in accordance with regulations made under ***subsection (8).*** **(7)**

Subject to ***paragraph (b),*** the Revenue Commissioners shall make regulations permitting the submission to the Probate Office of the Inland Revenue affidavit and the other documents referred to in ***subsections (2)*** to ***(4)*** by simultaneous electronic transmission of these documents to that Office and to the Revenue Commissioners. **(8)(a)**

Regulations made under ***subsection (8)*** will only be made by the Revenue Commissioners where they are satisfied that both the Probate Office and the Revenue Commissioners have the technical expertise to perform their functions if the regulations are made. **(8)(b)**

Regulations under ***subsection (8)*** may contain such matters as appears necessary or appropriate to the Revenue Commissioners for the purpose of giving effect to that subsection. **(8)(c)**

The Revenue Commissioners and the Probate Office will have access to the affidavits and documents that have been transmitted electronically under ***subsection (8).*** **(9)**

The intended applicant(s) for probate or letters of administration is/are obliged to appoint a solicitor who is entitled to practice in the State to act in relation to the administration of the estate of a deceased person where — **(10)**

- property passing under the deceased person’s will or intestacy or Part IX or section 56 of the Succession Act 1965, or otherwise as a result of the death of that person, is taken by a person or persons who is or are not resident in the State, **(a)**
- the market value of the property taken by any person exceeds €20,000, **(b)**

(c)

- the intended applicant(s) for probate or letters of administration is or are resident outside the State, and **(d)**
- a return would be required to be delivered to the Revenue Commissioners in respect of the property under ***section 46(2)*** if the valuation date were the date of death of that person.

(11)

The Probate Office will not issue probate or letters of administration in respect of the estate of a deceased person in any case to which ***subsection (10)*** applies unless a solicitor who is entitled to practice in the State has been appointed by the intended applicant(s) to act in connection with the administration of the estate of a deceased person.

49 Assessment of tax

Summary

This section deals with assessments of tax made by the Revenue Commissioners where, for example, a return has not been delivered or an incorrect return has been made. If an assessment made on a return is incorrect, the section empowers them to issue a correcting assessment or to issue an additional assessment. The section also provides for service of notice of an assessment and for publication in *Iris Oifigiúil* if the address of an accountable person is not known.

The period within which the Revenue Commissioners can raise assessments, correcting assessments or additional assessments is being restricted to a period of 4 years from the date of receipt of the return. This restriction will not apply where fraud or neglect is involved. These provisions came into effect by way of Ministerial Order on 1 January 2005.

Details

In the normal case, a self-assessed return is delivered by a donee or successor under ***section 46***. However, if no return is delivered, or if an unsatisfactory return is delivered, the Revenue Commissioners can make an assessment of tax. If the accountable person is aggrieved by an assessment made by the Revenue Commissioners, he/she may lodge an appeal under ***section 67***. **(1)**

The Revenue Commissioners may issue an assessment to a person referred to in ***section 45(1)*** where a return has not been delivered to them under ***section 46(2).*** **(1A)**

The Revenue Commissioners are empowered—

- to make a correcting assessment where an assessment was incorrect or an additional assessment where too little tax was assessed; (2), (3)
- to serve written notice of the assessment of tax on the accountable person or that accountable person’s agent or personal representative; (4)
- publish a notice of the making of the assessment and of such particulars as they consider necessary in *Iris Oifigiúil*, where the accountable person’s whereabouts are unknown. The accountable person or that person’s personal (5)

representative is deemed to have been served with notice of the assessment on the date of publication;

- make an assessment, correcting assessment or additional assessment from any return or additional return delivered under ***section 46*** or from any other information in their possession or from any one or more of these sources. (6)

  The period within which the Revenue Commissioners can raise an assessment, a correcting assessment or an additional assessment is being restricted to a period of 4 years from the date of receipt of the gift, inheritance or discretionary trust tax return. This restriction will not apply where fraud or neglect is involved. For the purposes of this subsection, neglect includes a failure to deliver a correct return. These provisions came into effect on 1 January 2005; (6A), (6B)

- to make assessments of tax as to the best of their knowledge, information and belief ought to be charged. The information which may be used can include information received from a member of the Garda Síochána. (7)

The Revenue Commissioners are not precluded from making an assessment of tax, a correcting assessment of tax or an additional assessment of tax under this section notwithstanding the requirement to self-assess tax under ***section 46***. **(8)**

50 Computation of tax

This section provides that gift tax and inheritance tax are to be assessed in accordance with ***Schedule 2***. The assessment provisions relating to the 6% and 1% charges imposed on certain discretionary trusts are contained in ***sections 18*** and ***23*** respectively.

PART 7 PAYMENT AND RECOVERY OF TAX, INTEREST AND PENALTIES

Overview

This Part contains provisions relating to the payment of tax and the charging of interest on overdue tax and the imposition of penalties for failure to deliver a return.

The tax may be paid by instalments in certain cases and subject to certain conditions. Tax on inheritances may be paid by means of surrender of certain Government securities comprised in the inheritance.

Provision is made to repay interest on tax or interest overpaid and for the postponement, remission and compounding of tax in certain cases.

51 Payment of tax and interest on tax

<u>Summary</u>

This section contains provisions relating to the payment of tax and the charging of interest on overdue tax. The tax is due on the valuation date and simple interest, at the rate or rates set out in Part I of the Table in ***subsection (2)*** (inserted by section 145 of the Finance Act 2005) runs from that date until the date of payment. If, however, tax is paid on or before 31 October in the relevant year, no interest will be payable. If tax assessed by the Revenue Commissioners is paid within 30 days of the assessment, interest will not be charged for that period. In the case of gifts which become inheritances by reason of the death of the disponer within 2 years of the date of the gift, interest runs from the date of death.

A payment may be made on account of tax due, whether in advance of an assessment or subsequent to an assessment. Any payment is applied, in the first instance, against interest which may have accrued and the balance is applied against tax.

<u>Details</u>

Tax is due and payable on the valuation date. **(1)**

Simple interest is payable, without deduction of income tax, on the tax arising by reason of section 15(1) or 20(1) from the valuation date to the date of payment of that tax, and the amount of that interest shall be determined in accordance with paragraph (c) of subsection (2). **(1A)**

Simple interest is payable, without deduction of income tax, on the tax where the relevant date occurs — **(2)(a)**

- in the period from 1 January to 31 August in any year, from 1 November in that year to the date of payment of that tax, and **(i)**
- in the period 1 September to 31 December in any year, from 1 November in the following year to the date of payment of that tax. **(ii)**

The amount of that interest is determined in accordance with ***paragraph (c)***.

Interest payable in accordance with ***paragraph (a)*** is chargeable and recoverable as if it were part of the tax. **(2)(b)**

The following definitions apply for the purposes of ***subsection (2)(c)***: **(2)(c)(i)**

"period of delay" defines the period for which interest is payable on unpaid tax;

"relevant period" is designed to divide up any period of delay whose duration covers a period during which more than one rate of interest applies. The overall period of delay is to be divided up into the various periods (i.e. the relevant periods) applicable to any particular rate of interest. The interest due is then calculated in respect of each interest rate in accordance with the formula in ***subparagraph (ii)***. The interest due for each relevant period is then aggregated to give the full interest payable in respect of any given period of delay;

"Table" means the Table to the subsection.

Provision is made for calculating interest where the period of delay falls wholly into only one of the periods specified in Part 1 of the Table. Provision is also made where the period of delay straddles more than one of the periods specified in Part 1 of the Table. Part 1 of the Table sets out the normal interest rate to be charged on unpaid tax. Part 2 of the Table sets out the reduced rates of interest to be paid on unpaid tax in respect of certain agricultural property and business property which is being paid in instalments under ***section 55***. **(2)(c)(ii)**

The provisions of ***subsection (2)*** are amended where interest is to be calculated in respect of unpaid tax to which the provisions of ***section 55*** apply. [***Section 55*** provides for the payment of tax in respect of certain agricultural property and business property by way of instalments and, where tax is paid under that section, interest will be payable, in accordance with Part 2 of the Table, at 75% of the normal rate.] **(2A)**

Interest is not payable on the tax—

- to the extent to which ***section 89(4)(a)*** applies (i.e. the agricultural relief clawback), for the duration of the period from the valuation date to the date the agricultural relief ceases to apply, (3)(a)
- to the extent to which ***section 77(3)*** and ***(4)*** applies (i.e. the heritage property exemption clawback), for the duration of the period from the valuation date to the date the exemption ceases to apply, (3)(b)
- to the extent to which ***section 101(2)*** applies (i.e. the business property relief (3)(c)

clawback), for the duration of the period from the valuation date to the date of the reduction which would otherwise fall to be made under ***section 92*** ceases to be applicable,

- to the extent to which ***section 78(6)*** applies (i.e. the company heritage property exemption clawback), for the duration of the period from the valuation date to the date the exemption ceases to apply, (3)(d)

- to the extent to which ***section 86(6)*** or ***(7)*** applies (i.e. the clawback of the exemption relating to certain dwellings), for the duration of the period from the valuation date to the date the exemption ceases to apply, (3)(e)

- to the extent to which ***section 102A(2)*** applies, for the duration of the period from the valuation date to the date the development land is disposed of. (3)(f)

Where tax and interest is paid within 30 days of the date of an assessment of tax made by the Revenue Commissioners under ***section 49***, interest will not be chargeable on that tax for the period of 30 days from the date of the assessment or any part of that period. **(4)**

A payment of tax by an accountable person is treated as a payment on account of tax notwithstanding that the payment may be conditional or that the assessment of tax is incorrect. **(5)**

Payments on account of tax due may be made at any time. Interest ceases to be chargeable on so much of the payment as is referable to tax. **(6)**

Where a gift becomes an inheritance by reason of the death of the disponer within 2 years of the disposition, the date of death is treated as the valuation date for the purpose of calculating interest. **(7)**

Where the value of a limited interest is to be ascertained in accordance with ***rule 8*** of ***Schedule 1*** as if it were a series of absolute interests, the section has effect as if the reference to the valuation date in the section were references to the date of the taking of that absolute interest. **(8)**

52 Set-off of gift tax paid in respect of an inheritance

This section provides that gift tax and interest paid in respect of a gift which becomes an inheritance by reason of the death of the disponer within 2 years of the disposition will be treated as a payment on account of the inheritance tax subsequently payable as a result of that death.

53 Surcharge for under-valuation of property

Summary

This section imposes a surcharge in respect of any substantial under-valuation of the value of an asset which is comprised in a gift or inheritance and which is included in a return delivered by an accountable person. The surcharge consists of a specified percentage depending on the degree of the under-valuation (i.e. 30%, 20% or 10%) of the

tax ultimately attributable to the undervalued asset. The rights of appeal contained in the capital acquisitions tax legislation will apply in ascertaining the value of any asset on which the surcharge is based.

Details

"ascertained value" means the market value of property subject to the right to appeal under ***section 66*** or ***67***. **(1)**

Where an accountable person delivers a return and, in the opinion of the Revenue Commissioners, his/her estimate of the market value of any asset in the return is less than 67% of the ultimate ascertained value of that asset, a surcharge will become payable as set out in the Table. Where the value of the asset included in the return by an accountable person expressed as a percentage of the value of that asset when ultimately ascertained is— **(2)**

- equal to or greater than 0% but less than 40%, the surcharge will be 30% of the tax ultimately attributable to that asset;
- equal to or greater than 40% but less than 50%, the surcharge will be 20% of the tax ultimately attributable to that asset;
- equal to or greater than 50% but less than 67%, the surcharge will be 10% of the tax ultimately attributable to that asset.

Example

A delivers a return in respect of a house devised to him by his brother. The market value of the house is ascertained by the Revenue Commissioners at €150,000 under ***section 26***. The tax ultimately payable on the valuation of €150,000 is €24,000.

If the value of the house shown in the return delivered by the brother of the deceased person—

is €105,000, that €105,000 is 70% of €150,000, and no surcharge is involved;

is €75,000, that €75,000 is 50% of €150,000, and the surcharge is 10% of €24,000 = €2,400;

is €60,000, that €60,000 is 40% of €150,000, and the surcharge is 20% of €24,000 = €4,800;

is €45,000, that €45,000 is 30% of €150,000, and the surcharge is 30% of €24,000 = €7,200.

If a taxable inheritance taken by A consists of a house valued at €150,000, €10,000 cash and private company shares, whose value is ascertained by the Revenue Commissioners at €30,000, making a total taxable value of €190,000 on which the tax is €32,000, any surcharge which might arise in connection with the valuation of the house would be based on the amount of tax attributable to the property which is that house.

The amount of tax attributable to the house in this example is €25,263, being—

$$€\,32{,}000 \times \frac{€\,150{,}000}{€\,190{,}000}$$

A surcharge is liable to interest at the rate or rates set out in Part 1 of the Table in ***section 51(2)*** (inserted by section 145 of the Finance Act 2005). Any surcharge and interest are chargeable and recoverable as if they were part of the tax. **(3)**

The taxpayer has a right of appeal to the Appeal Commissioners against the imposition of the surcharge on the basis that he/she had reasonable grounds for his/her estimate of the market value of the asset giving rise to the surcharge. **(4)**

The usual appeal provisions apply to an appeal under ***subsection (4)***, including a right of rehearing in the Circuit Court, and a right of appeal to the High Court on a point of law. **(5)**

53A Surcharge for late returns

"Specified return date" means — **(1)**

- in relation to a valuation date occurring in the period 1 January to 31 August in any year, 31 October in that year, **(a)**
- in relation to a valuation date occurring in the period 1 September to 31 December, 31 October in the following year. **(b)**

For the purposes of the section —

- a person will be deemed to have failed to have delivered a return on or before the specified return date unless the error in the return is remedied on or before that date where a person has fraudulently or negligently delivered an incorrect return, **(2)(a)**
- a person will be deemed to have failed to have delivered a return on or before the specified return date unless the error in the return is remedied without unreasonable delay where a person delivers a return on or before the specified return date but does so neither fraudulently or negligently and it comes to that person's attention (or to the attention of that person's personal representatives where that person is dead) that it is incorrect, **(2)(b)**
- a person will be deemed not to have delivered a return on or before the specified return date unless a person delivers a statement or evidence within the time specified in the notice where a person delivers a return on or before the specified return date but the Revenue Commissioners, by reason of being dissatisfied with any information contained in the return, require that person by notice in writing served on him or her under ***section 46(7)*** to deliver such statement or evidence as may be required by them. **(2)(c)**

Where a person is required to deliver a return and fails to do so on or before the specified return date, the amount of tax for that year which is or would have been payable if such a return had been delivered will be increased by an amount (referred to as "the surcharge") equal to — **(3)**

- 5 per cent of the amount of tax, subject to a maximum increased amount of €12,695 for delays in filing of less than 2 months, **(a)**
- 10 per of the amount of tax, subject to a maximum increased amount of €63,485 for delays in filing of more than 2 months. **(b)**

Where the tax contained in the assessment to tax is not the amount of tax as increased,

the provisions of the Act, including in particular those relating to the collection and recovery of tax and the payment of interest on unpaid tax, apply as if the tax contained in the assessment were the amount as so increased by the surcharge. **(4)**

54 Payment of tax by instalments

Summary

This section provides that, in the case of real property (i.e. land and buildings) and in the case of a limited interest in any property, tax may, at the option of the person liable for tax, be paid by monthly instalments over a period not exceeding 5 years in such manner as may be determined by the Revenue Commissioners. . Interest on an unpaid balance, at the rate or rates set out in Part 1 of the Table in ***section 51(2)*** (inserted by section 145 of the Finance Act 2005), will be added to each instalment. This provision does not apply to tax arising by reason of ***section 20***.

An outstanding balance can be paid at any time and, except in the case of a limited interest, it must be paid in the event of a sale of the property concerned. Instalments due after the death of a donee or successor, who is a life tenant, will not be payable.

Details

Tax may, at the option of the person delivering the return, be paid by monthly instalments over a period not exceeding 5 years in manner as may be determined by the Revenue Commissioners. Interest on any unpaid tax, at the rate or rates set out in Part 1 of the Table in ***section 51(2)*** (inserted by section 145 of the Finance Act 2005), will be added to, and payable with, each instalment. This provision does not apply to tax arising by reason of ***section 20***. **(1)**

An unpaid instalment can be paid before it becomes due. **(2)**

Except in the case of a limited interest, all unpaid instalments must be paid on completion of a sale or compulsory acquisition of the property comprised in the gift or inheritance. **(3)**

Tax on an absolute interest in personal property may not be paid by instalments. Thus, the facility to pay by instalments applies to tax chargeable on real property and limited interests in personal property only. **(4)**

Where the donee or successor, who is a life tenant, dies before all the instalments have become due i.e. within 5 years of the valuation date, those instalments due after his/her death will not be payable. If all the tax, or some instalments, have been paid in advance, the amount of tax, or those instalments due for the period subsequent to the death of the life tenant, will be treated as an overpayment of tax and will be refunded. **(5)**

55 Payment of tax on certain assets by instalments

Summary

This section allows payment of capital acquisitions tax on certain agricultural and business property by instalments at a more favourable rate of interest than would

normally apply. Taxpayers have the option of spreading these payments over 5 years subject to simple interest at the rate or rates set out in Part 2 of the Table in ***section 51(2)*** (inserted by section 145 of the Finance Act 2005). The instalment facility for the payment of tax on agricultural and business property will continue to apply to a gift or an inheritance of such property which is sold or compulsorily acquired within the instalment period, provided that the proceeds of the sale or compulsory acquisition are re-invested in other qualifying property within 1 year of the sale or 6 years in the case of a compulsory acquisition of agricultural property. The section also gives the Minister power to vary the interest rate by Ministerial regulation.

Business property which would not, as a rule, qualify for business relief, because of the nature of the business or the size of the shareholding, is not qualifying business property for the purpose of this section.

Details

"agricultural property" has the same meaning as it has in ***section 89***; and **(1)**

"relevant business property" has the same meaning as it has in ***section 93***, other than quoted shares or securities. For the purposes of the definition, the minimum period of ownership provisions of ***section 94*** and ***section 100(4)*** do not apply.

(2) Where the whole or part of the tax which is due and payable in respect of a taxable gift or taxable inheritance is attributable to either or both agricultural property and relevant business property, ***section 54*** will apply to that whole or part of the tax notwithstanding ***subsections (3)*** and ***(4)*** of that section. [***Section 54(3)*** provides that all unpaid instalments must be paid up on the occasion of a sale and ***section 54(4)*** provides that the instalment option applies, in general, to land and buildings.]

The instalment provisions will apply to business property (other than quoted shares or securities) notwithstanding the fact that the business property does not qualify for business relief by reason of not having been held (or used in the business concerned) for the minimum ownership period.

Where agricultural or business property is sold or compulsorily acquired within the 5 year instalment period, any unpaid instalments must be paid unless the proceeds of the sale or compulsory acquisition are re-invested in other qualifying property within a year of the sale or 6 years in the case of a compulsory acquisition of agricultural property.

The rate at which interest is payable on the whole or part of the tax will be the rate or rates set out in Part 2 of the Table in ***section 51(2)*** (inserted by section 145 of the Finance Act 2005), or such other rate (if any) as stands prescribed by the Minister for Finance by regulations, for each day or part of a day instead of the rate normally applying to such tax. However, the normal rate of interest will apply to an overdue instalment.

(3) An "overdue instalment" means an instalment which is overdue for the purposes of ***section 54*** (as it applies to ***section 55***) or for the purposes of ***paragraph (a)*** of ***subsection (2)*** i.e. where agricultural property or business property is sold or compulsorily acquired and not re-invested within 1 year of the sale or compulsory acquisition in other agricultural property or relevant business property (except where the interest of the donee or successor is a limited interest).

The value of a business or an interest in a business for the purposes of the section is its net value ascertained in accordance with ***section 98***. **(4)**

The section does not apply to the 6% or 1% taxes payable on certain discretionary trusts under ***sections 15*** and ***20***. **(5)**

Every regulation made under the section to alter the rate of interest payable must be laid before Dáil Éireann as soon as possible after it is made. If a resolution annulling the regulation is passed by Dáil Éireann within 21 sitting days after the regulation is laid before it, the regulation will be annulled. However, this will not affect the validity of anything done under that regulation. **(6)**

56 Payment of inheritance tax by transfer of securities

Summary

This section provides that Government securities which were issued with the condition that they might be used to pay death duties may be used to pay inheritance tax.

Details

This section provides that section 22 of the Finance Act 1954 and the regulations made under that Act shall apply, with any necessary modifications, to the payment of inheritance tax by the transfer of securities to the Minister for Finance, as they apply to the payment of death duties by the transfer of securities to the Minister for Finance.

Section 22 of the Finance Act 1954 provides that where a security is issued by the Government with the condition that it will be accepted in payment of death duties, it may be used (by the person from whom the death duties are due) to pay death duties by transfer of the security and it will be accepted at par in payment of the amount due.

The conditions under which the security will be accepted are stated in regulations made by the Minister for Finance under section 22(5) of the Finance Act 1954, and are contained in a number of statutory instruments. These statutory instruments are all broadly similar. The conditions are that—

- the stock will only be accepted in payment of death duties on the property passing under the will or intestacy of a deceased person if it formed part of such property at his/her death and for 3 months before that date (or from the date of the original subscription).

- the stock will only be accepted in payment of death duties on property passing on the death of a person under a title other than his/her will or intestacy if it formed part of such property continuously from the date of the original subscription to the date of his/her death or for 3 months immediately preceding his/her death.

If the testator bequeaths the Government stock to one person and the residue to another, it is the practice of the Revenue Commissioners to allow the inheritance tax in respect of the residue to be paid by Government stock if the beneficiaries involved agree to this course of action.

The section applies to mainstream inheritance tax only – it does not apply to the 6% or 1% charges imposed on certain discretionary trusts.

It should be noted that the only stock which qualifies under this section is 6.5% Exchequer Stock 2000/2005.

57 Overpayment of tax

Summary

The Finance Act 2003 significantly altered the regime for repaying interest where capital acquisitions tax has been overpaid.

The new ***section 57*** restricts the repayment of interest on overpayments of capital acquisitions tax (including probate tax) to valid claims made within 4 years of the valuation date or the date of payment of the tax concerned. The latter date applies where tax is paid within 4 months after the valuation date. A valid claim is one where the Revenue Commissioners have been provided with all the information to enable them establish the extent of the overpayment.

The section also provides that interest on a repayment of capital acquisitions tax will only be paid where that repayment has not been made within 6 months of receiving a valid claim for repayment. There is an exception to this general rule where the Revenue Commissioners have made an error in the operation of capital acquisitions tax. The rate of interest on repayments of capital acquisitions tax will be at the rate of 0.011% per day or part of a day.

The section came into effect, in general, by way of Ministerial Order on 1 November 2003. Before the section came into effect, overpayments of capital acquisitions tax were dealt with under the existing ***section 57***, which did not require that claims be made within 4 years of the valuation date or the date of payment of the tax concerned. In addition, all overpayments of capital acquisitions tax are entitled to be paid with interest at the rate of 0.0161% per day or part of a day regardless of the circumstances surrounding the overpayment, where the claim for repayment was made before the provisions of the new ***section 57*** come into effect.

Details

"relevant date", in relation to capital acquisitions tax, means— **(1)**

- the date which is 183 days after the date on which a valid claim in respect of the repayment is made to the Revenue Commissioners, or
- where the repayment is due to a mistaken assumption in the operation of capital acquisitions tax on the part of the Revenue Commissioners, the date which is the date of the payment of capital acquisitions tax, interest, surcharge or penalty, as the case may be, which has given rise to that repayment;

"repayment" means a repayment of capital acquisitions tax including a repayment of—

- any interest charged,
- any surcharge imposed,
- any penalty incurred,

under the provisions of the Act;

"tax" includes probate tax, payment on account of tax, interest charged, a surcharge imposed or a penalty incurred under any provision of the Act.

Where a claim to repayment made to the Revenue Commissioners is a valid claim, they will give relief by way of repayment of the excess or otherwise as is reasonable and just, subject to the provisions of the section. **(2)**

Notwithstanding ***subsection (2)***, no tax will be repaid to an accountable person in respect of a valid claim unless that valid claim is made within the period of 4 years commencing on – (a) 31 October in the year in which that tax was due to be paid in accordance with section 46(2A), or (b) the valuation date or the date of the payment of the tax concerned (where the tax has been paid within 4 months of the valuation date) in respect of inheritances to which sections 15(1) and 20(1) apply. **(3)**

Subsection (3) will not apply to a claim for repayment arising in respect of discretionary trust tax under ***section 18(3)*** or under Double Taxation Treaties with the United States of America or the United Kingdom which allow a period longer than 4 years. **(4)**

This provision deals with the transitional measures and ensures that the "new" regime will not apply to a claim for repayment of tax arising on or before 28 March 2003, where a valid claim is made on or before 31 December 2004. **(5)**

Where a repayment of tax is being made in respect of a valid claim, simple interest will be payable at the rate of 0.011% for each day or part of a day for the period commencing on the relevant date (as defined in ***subsection (1)***) and ending on the date that the repayment is made. **(6)**

A claim for repayment will be treated as a valid claim where it has been made in accordance with any requirements of the existing law (if any) and where all necessary information required by the Revenue Commissioners in support of the claim has been furnished to them. **(7)**

Interest will not be payable under the section where the amount is €10 or less. **(8)**

No interest will be payable under the section in respect of a repayment or part of a repayment in respect of which interest is payable under any other provision of any other enactment. **(9)**

Income tax will not be deducted from any payment of interest and that interest will not be reckoned in computing income for the purposes of the Tax Acts. **(10)**

The Minister may, from time to time, make an order prescribing a rate for the purposes of ***subsection (6)***. In addition, any such order made by the Minister for Finance must be laid before Dáil Éireann as soon as possible after it is made. If a resolution annulling the order is passed by Dáil Éireann within 21 sitting days after the order is laid before it, the order will be annulled. However, this will not affect the validity of anything done under that order. **(11)**

The Revenue Commissioners may make regulations as they deem necessary in relation to the operation of the section. **(12)**

58 Penalties

<u>Summary</u>

This section provides penalties for any acts or omissions which would contribute to loss of revenue, such as—

- failure to deliver returns, assess tax and pay tax;
- failure to permit inspection of property for valuation purposes;
- deliberate or careless delivery of returns, statements, evidence or valuations.

The section is based broadly on the penalty provision in Chapter 1 of Part 47 of the Taxes Consolidation Act 1997.

Penalties based on the tax due in a return are imposed where a person, fraudulently or negligently, fails to file a return. These tax-geared penalties came into effect by way of Ministerial Order on 1 October 2003.

<u>Details</u>

A penalty of €3,000 is imposed for failure to comply with certain provisions of the Act, namely— **(1)**

- ***section 46(2)***, which makes a person, who is primarily accountable for the payment of tax, liable to deliver a return within 4 months of the valuation date and assess and pay the tax due;
- ***section 46(6)***, which makes a person who is accountable for the payment of tax liable for delivery of a return within a specified period, when required in writing to do so;
- ***section 46(7)***, which provides that a person who is accountable for the payment of tax must deliver and verify within a specified period a statement of particulars relating to property relevant to the assessment of tax, when required in writing to do so;
- ***section 46(8)***, which makes a person who is accountable for the payment of tax liable for the delivery of an additional return when required in writing to do so;

- ***section 46(9)***, which makes a person who is accountable for the payment of tax liable for the delivery within 3 months of an additional return when he/she becomes aware of any material error in or omission from the previous return.

A further penalty of €30 is imposed for each day that the contravention or failure continues after judgement has been given by the court.

Where a person deliberately or carelessly fails to comply with a requirement to deliver a return or additional return under ***section 46(2)***, ***(6)*** or ***(8)***, he/she is liable to a penalty of– **(1A)**

- €3,000 , and (a)
- the amount of the difference specified in ***subsection (5A)***. (b)

Subsection (1A) came into effect by way of Ministerial Order on 1 October 2003.

A penalty of €3,000 is imposed on any person who, having the custody or possession of property, prevents or obstructs any authorised person in the performance of his/her functions in relation to the inspection of that property. This could arise under ***section 26(3)***, for example, where the Revenue Commissioners authorise a person to inspect any property and give them a report on the value of that property for the purpose of the Act. That subsection goes on to state that the person having custody or possession of the property shall permit inspection at such reasonable times as the Revenue Commissioners consider necessary. **(2)**

Heavier penalties are provided for where tax is underpaid as a result of deliberate or careless acts by an accountable person. This can refer to any one of the following 4 acts as a result of which too little tax is paid: **(3)**

- delivery of incorrect returns or additional returns;
- making incorrect statements, valuations, etc. in connection with any property comprised in the taxable gift or inheritance;
- making incorrect statements, valuations, etc. for the purpose of claiming any allowance, deduction, exemption or relief;
- making incorrect statements, valuations, etc. in connection with any other matter.

The penalty is €6,345 plus the difference in tax involved as a result of the deliberate or careless act.

Where any return, additional return, statement, declaration, evidence or valuation is delivered by a person neither deliberately nor carelessly and it comes to his/her notice later that it is incorrect, then, unless the error is remedied without unreasonable delay, such matter will be treated as having been negligently done by him/her. In these circumstances, the consequences in ***subsection (3)*** by way of penalty follow. **(4)**

The difference referred to in ***subsection (3)*** is defined as the tax that would have been lost by the incorrect return, statements, valuations, etc. **(5)**

The difference referred to in ***paragraph (b)*** of ***subsection (1A)*** is the difference between— **(5A)**

- the amount of tax paid by that person in respect of the taxable gift or taxable inheritance to which the return or additional return relates, and (a)
- the amount of the tax that would have been payable if the return or additional return had been correct. (b)

Subsection (5A) came into effect by way of Ministerial Order on 1 October 2003.

Where anything referred to in ***subsection (3)*** is delivered, made or furnished on behalf of a person, it will be deemed to have been delivered, made or furnished by that person unless he/she proves that it was done without his/her knowledge and consent. **(6)**

Any person who assists in or induces the delivery, making or furnishing of any return, additional return, etc. which he/she knows to be incorrect is liable to a penalty of €3,000. **(7)**

The section will not affect any criminal proceedings. **(8)**

The provisions of certain sections of the Taxes Consolidation Act 1997 are extended to capital acquisitions tax. The provisions in question relate to penalty proceedings. The incorporation of these provisions into capital acquisitions tax law enables the Revenue Commissioners to use these provisions for infringements of the capital acquisitions tax code on the same basis as they are used for infringements of the income tax code. **(9)**

The provisions which are incorporated into the capital acquisitions tax code are:

- section 987(4), which provides that certain statements, signed by an officer of the Revenue Commissioners, may be tendered in evidence in Court proceedings;
- section 1062, which provides that, where a penalty cannot be calculated because the tax on which it is based has not been finally ascertained, proceedings may be initiated and adjourned until the amount of tax outstanding has been ascertained;
- section 1063, which provides that proceedings for the recovery of any fine or penalty may be begun at any time within 6 years of the date on which the fine or penalty was incurred;
- section 1064, which provides for the institution of summary proceedings in certain circumstances within 10 years of the date of the committing of an offence or incurring of a penalty;
- section 1065, which provides that the Revenue Commissioners may, at their discretion, mitigate any fine or penalty, either before or after judgement or stay any proceedings for the recovery of a fine or penalty. The Minister for Finance is also empowered to mitigate any fine or penalty, either before or after judgement;
- section 1066, which provides that any person who gives false evidence on oath or in any written statement, will be regarded as having committed perjury;

- section 1068, which provides for an extension of the times allowed to an individual to comply with a request made by the Revenue Commissioners, and

section 1077E, which provides for penalties for deliberately or carelessly making incorrect returns, etc.

The provisions referred to above are subject to the provisions of the section and are applied with any necessary modifications to capital acquisitions tax.

59 Postponement, remission and compounding of tax

Summary

This section provides for—

- payment of tax to be postponed in cases of excessive hardship,
- remission of interest and of tax after certain specified periods, and
- compounding of tax in certain circumstances.

Details

Where the Revenue Commissioners are satisfied that tax leviable in respect of a gift or inheritance cannot without excessive hardship be raised at once, they can allow payment to be postponed for such period, to such extent and on such terms (including the waiver of interest) as they may think fit. **(1)**

Where the interest accrued on tax exceeds the amount of the tax, the Revenue Commissioners can remit the amount by which the interest exceeds the tax. **(2)**

The Revenue Commissioners are empowered to remit tax and interest which remains unpaid after 20 years from the date on which it has become due and payable. **(3)**

The Revenue Commissioners are empowered to compound tax where, for example, owing to the number of deaths or dispositions involved or the complicated nature of the interest involved, it would be difficult to ascertain the exact amount of tax payable. **(4)**

60 Tax to be a charge

[This section has been deleted by section 147 of the Finance Act 2010.]

61 Receipts and certificates

[This section has been deleted by section 147 of the Finance Act 2010.]

62 Certificate relating to registration of title based on possession

Summary

This section introduces the requirement of a capital acquisitions tax clearance certificate for applications for registration of title to land to the Property Registration Authority ("the Authority") which are based on possession (commonly known as "squatters title"). Before a title to land based on possession will be registered, the applicant for registration must produce to the Authority a Revenue clearance certificate to the effect that they are satisfied that any liabilities to gift tax and inheritance tax which became charged on the land (not being liabilities which became so charged prior to the date on which ownership was last registered) have been or will be paid.

The necessity for production of a capital acquisitions tax clearance certificate before a title to land based on possession will be registered ensures that any liability relating to gifts and inheritances, which have never been disclosed to the Revenue Commissioners, must be discharged immediately or, if not immediately, at least within such additional time as the Revenue Commissioners consider to be reasonable.

A self-certification option is available for small properties which come within prescribed limits of value and size and are not part of a larger property and is designed to assist vendors and purchasers of small areas of land and to facilitate the work of legal practitioners, statutory bodies and the capital acquisitions tax clearance certificate area of the Revenue Commissioners.

Details

"Act of 1964", "the Authority" and "the Rules of 1972" are self-explanatory. **(1)**

"relevant period" means the period commencing on 28 February 1974 and ending on the date when registration was made. However, where ownership of the land was last registered subsequent to 28 February 1974, liabilities prior to the date of such last registration are excluded.

The Property Registration Authority ("the Authority") may accept a certificate for a period falling short of the period referred to above if he/she has reason to believe that there was no subsequent death relevant to the title.

A person applying to the Authority to become the registered owner of property based on possession must produce a certificate issued by the Revenue Commissioners to the effect that: **(2)**

- the property did not become charged with gift tax or inheritance tax during the relevant period, or
- any charge for gift tax or inheritance tax to which the property became subject during that period has been discharged or will (to the extent that it has not been discharged) be discharged within a time considered by the Revenue Commissioners to be reasonable.

The Authority can accept that an application without a certificate having been issued by **(3)**

the Revenue Commissioners is not based on possession if the solicitor makes a declaration in writing to that effect. This covers cases where, without any title details having been furnished to the Authority, a title is registered on the basis of a solicitor's certificate that, so far as that solicitor is concerned, it is safe to register title as absolute or good leasehold.

The Revenue Commissioners are required to comply with a request for a clearance certificate, provided that the conditions for such a certificate have been fulfilled and the application and the certificate are on a form provided by them. **(4)**

A certificate issued by the Revenue Commissioners for the purposes of ***subsection (2)*** shall be in such terms and subject to such qualifications as they think fit. It will not, however, be a certificate for any other purpose. **(5)**

The reference in ***subsection (2)*** to a certificate issued by the Revenue Commissioners will be construed as including a certificate to which ***subsection (7)*** relates i.e. in cases where self-certification by solicitors apply. **(6)**

An option of self-certification will be available where the solicitor is satisfied that the property in respect of which the application is being made is within prescribed limits of size and market value and is not part of a larger property which is not within those limits. The prescribed limits in question are: **(7)**

- €19,050, in a case where the area occupied by the property does not exceed 5 hectares, or
- €127,000, in a case where the applicant is a statutory authority.

There is an exception to the rule that the small property being registered should not be part of a larger property which exceeds the limits set out in ***subsection (7)***. This arises where the sole purpose of the application for registration is the rectification of the register to take account of small mapping errors not exceeding 500 square metres in area or €2,540 in market value and where the application is not part of a series of related applications relating to a larger holding of property exceeding either of these limits. **(8)**

63 Recovery of tax and penalties

Summary

Chapter 1C of Part 42 of the Taxes Consolidation Act 1997 deals with the recovery of tax, interest and penalties. It makes every sum due for tax, interest and penalties a debt due to the Minister for Finance for the benefit of the Central Fund. It also provides for the recovery of such sums by court action.

Details

[This subsection has been repealed by Schedule 4 to the Finance (No. 2) Act 2008 – see now Chapter 1C of Part 42 of the Taxes Consolidation Act 1997.] **(1)**

[This subsection has been repealed by Schedule 4 to the Finance (No. 2) Act 2008 – see now Chapter 1C of Part 42 of the Taxes Consolidation Act 1997.] **(2)**

The Revenue Commissioners can take proceedings in the Circuit Court to enforce the delivery of a return in a case where the donee or successor fails to deliver a return. This provision is necessary because, although the Revenue Commissioners have power under ***section 49*** to make an assessment to the best of their knowledge in the absence of a return, cases will arise where they will not have sufficient information on which to make a return. In that situation, the only remedy is to oblige the persons accountable for the payment of tax to furnish the information by delivering a return. **(3)**

Where the Revenue Commissioners have to look to the owner of property on which the tax is a charge under ***section 60*** to recover the tax, they can issue an order directing the owner to pay the tax. **(4)**

64 Application of certain income tax provisions in relation to the collection and recovery of capital acquisitions tax, etc.

[This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008 – see now Chapter 1C of Part 42 of the Taxes Consolidation Act 1997.]

65 Evidence in proceedings for recovery of tax

[This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008 – see now Chapter 1C of Part 42 of the Taxes Consolidation Act 1997.]

PART 8 APPEALS

Overview

This Part contains provisions relating to appeals regarding the value of real property, appeals in other cases and conditions which must be complied with before an appeal can be made.

In addition to a statutory right of appeal, taxpayers can avail of an internal review procedure under which anyone who is dissatisfied with a decision or an assessment made by the Revenue Commissioners may arrange to have that decision or assessment reviewed by a senior Revenue officer.

66 Appeals regarding value of real property

Summary

Where the question in dispute is the market value of real and leasehold property, the taxpayer may appeal to the property arbitrator appointed under the Property Values (Arbitration and Appeals) Act 1960. Both the taxpayer and the Revenue Commissioners may appeal a decision of the property arbitrator to the Courts. Appeals in all other cases are dealt with in ***section 67***.

The information contained in the particulars delivered form, which has to be furnished under the Stamp Duties Consolidation Act 1999 whenever a transfer or a lease takes place, will be received as *prima facie* evidence of all matters and things stated in such particulars for the purpose of any appeal under this section.

Details

This section refers to real property which is defined in ***section 2*** as, in effect, all immovable property – land and buildings. Where agreement cannot be reached between the taxpayer and the Revenue Commissioners, the taxpayer can appeal to the property arbitrator in the Land Values Reference Committee. That Committee consists of the Chief Justice, the President of the High Court and the Chairman of the Surveyors' Institution (Irish Branch). The appeal must be in the manner prescribed by section 33 of the Finance (1909-10) Act 1910. That section states that any person may appeal in the manner to be provided by rules made under that section. Amended rules entitled "Property Values (Arbitration and Appeals) Rules 1961" were drawn up in 1961 governing appeals to the property arbitrator. The property arbitrator was appointed by the Property Values (Arbitrations and Appeals) Act 1960, as the person to hear appeals under the 1910 Act. That Act allowed an appeal from the property arbitrator to be made to the Circuit Court or the High Court, as appropriate. **(1)**

The particulars to be delivered to the Revenue Commissioners under section 12(2) of the Stamp Duties Consolidation Act 1999 when property is sold or transferred will be **(2)**

received as *prima facie* evidence of all matters and things stated in such particulars for the purpose of any appeal under this section.

67 Appeals in other cases

<u>Summary</u>

This section allows for appeals in any case (other than the case of the value of real property to which the provisions of ***section 66*** apply) in which a person is aggrieved by the assessment of tax. The appeal lies to the Appeal Commissioners and, broadly speaking, the machinery adopted is the same as that applying to an appeal against an assessment of income tax.

Decisions of the Revenue Commissioners notified by them to the parties in a particular form may also be appealed to the Courts.

<u>Details</u>

"Appeal Commissioners" and "appellant" are self-explanatory. **(1)**

Any person who is requested by the Revenue Commissioners to pay an assessment of tax and who is aggrieved by the assessment may appeal against the assessment to the Appeal Commissioners who shall hear and determine the appeal. While the appeal is against the assessment, there is no restriction on the issues on which an appeal can be grounded. The determination will be final and conclusive unless the taxpayer or the Revenue Commissioners require the appeal to be re-heard by a Judge of the Circuit Court, or a case is required to be stated in relation to it for the opinion of the High Court on a point of law. **(2)**

No appeal will lie under this section in relation to the market value of real and leasehold property (to which ***section 66*** applies). **(3)**

A notice of intention to appeal must be given to the Revenue Commissioners in writing within 30 days of the relevant assessment, but provision for an extension of this time-limit is provided for in certain circumstances. **(4)**

The procedures for an appeal will be the same as the procedures for an appeal against an assessment of income tax. **(5)**

Unlike other taxes, the Revenue Commissioners have the same right as the appellant to have an appeal against a decision or an assessment relating to capital acquisitions tax reheard in the Circuit Court.

The circuit in which appeals may be reheard is generally the circuit where the appellant resides.

Any notice or other document required to be served on an appellant may be sent to his/her solicitor, accountant or other agent. It will then be deemed to have been served on the appellant, unless he/she proves that he/she has withdrawn his/her authority from the solicitor, accountant or other agent before the document was served. **(6)**

Evidence of any notice given by the Revenue Commissioners may be given in any appeal **(7)**

proceedings by the production of a document purporting to reproduce details of the notice, if those details are held on a Revenue computer record.

It is not necessary to prove the position of the person or persons who gave or served the notice or, where the notice is signed, to prove the signature, or that the person who signed it was authorised to do so. This provision is similar to section 869(3) of the Taxes Consolidation Act 1997.

Decisions of the Revenue Commissioners issued under the section to a person who is accountable for payment of the tax may be appealed against under this section and the appeal can be heard and determined as if the appeal were an appeal against an assessment of tax. **(8)**

68 Conditions before appeal may be made

Summary

This section ensures that individuals must first lodge an appropriate self-assessed return, and pay tax in accordance with that return, before being allowed to appeal against any gift/inheritance tax assessment made by Revenue.

Details

No appeal will lie under ***section 66*** or ***67*** until such time as the person aggrieved by the decision or assessment of the Revenue Commissioners (as the case may be) delivers to the Revenue Commissioners a full and true return of—

- the gift or inheritance in question;
- all the property comprised in such gift or inheritance on the valuation date;
- an estimate of the market value of such property on the valuation date; and
- such particulars as may be relevant to the assessment of tax in respect of such gift or inheritance.

The appellant must make on that return an assessment of such amount of tax as, to the best of that person's knowledge, information and belief, ought to be charged, levied and paid on the valuation date and pay the tax and interest in accordance with that assessment.

The self-assessment return which the appellant must deliver before being allowed to appeal relates to the gift or inheritance under appeal and not to any other gift or inheritance.

PART 9 EXEMPTIONS

Overview

This Part of the Act deals with exemptions from tax. Among the principal exemptions are gifts and inheritances for public or charitable purposes, gifts and inheritances of heritage property, certain inheritances taken by parents, gifts and inheritances of certain securities, gifts and inheritances from spouses, the proceeds of certain insurance policies taken out to pay gift tax and inheritance tax and gifts and inheritances which consist of the principal private residence of the person taking the gift or inheritance.

69 Exemption of small gifts

<u>Summary</u>

This section provides that the first €3,000 of the total taxable value of all taxable gifts taken by a donee from the same disponer in any year will be disregarded for the purposes of tax. The section also applies to a gift which becomes an inheritance by reason of the death of the disponer within 2 years of the disposition.

<u>Details</u>

"relevant period" means the period of 12 months ending on 31 December in each year. **(1)**

The first €3,000 of the total taxable value of all gifts taken by a donee from one disponer in any relevant period is exempt from tax and is not taken into account in computing tax (i.e. is not aggregated with subsequent gifts or inheritances for the purpose of calculating tax on the later gift or inheritance). **(2)**

The exemption is granted for any gift which becomes an inheritance by reason of the death of the disponer within 2 years of making the disposition. **(3)**

70 Exemption for spouses (gifts)

A gift taken by a person who is the spouse/civil partner of the disponer at the date of the gift is exempt from gift tax and is not taken into account in computing tax.

71 Exemption for spouses (inheritances)

An inheritance taken by a person who is the spouse/civil partner of the disponer at the date of the inheritance is exempt from inheritance tax and is not taken into account in computing tax.

72 Relief in respect of certain policies of insurance

Summary

This section grants exemption in respect of the proceeds of certain life insurance policies which would otherwise be liable to inheritance tax on the death of the insured person. The section provides that the proceeds of any qualifying insurance policy taken out under the section by an insured person on his/her life will be exempted from inheritance tax in so far as such proceeds are used to pay approved retirement fund tax, being tax which a qualifying assurance manager is obliged to deduct in accordance with the provisions of section 784A(4)(c) of the Taxes Consolidation Act 1997, i.e. tax payable in respect of a child aged 21 or over on the death of the beneficial owner of an approved retirement fund (ARF) or inheritance tax arising on his/her death, or within a year of his/her death, under a disposition made by him/her (e.g. under his/her will). Any part of the proceeds not so used is liable to inheritance tax.

The exemption also applies to joint policies effected by spouses to cover inheritance tax payable—

- on the death of the surviving spouse/civil partner,
- on the simultaneous deaths of both of them, or
- in the event of the surviving spouse/civil partner dying within 31 days of the death of the other spouse/civil partner.

It also applies where a policy is taken out by a life tenant to pay the tax arising on his/her death under a disposition made by someone other than that life tenant.

Details regarding the policies that qualify for the exemption are set out in a Statement of Practice (SP-CAT/1/04).

Details

(1) "approved retirement fund tax" means tax which a qualifying fund manager is obliged to deduct in accordance with the provisions of section 784A(4)(c) of the Taxes Consolidation Act 1997, i.e. tax payable in respect of a child aged 21 or over on the death of the beneficial owner of an approved retirement fund (ARF). An approved retirement fund is an alternative to an annuity and takes the form of a capital sum on retirement that can be retained in a tax-free vehicle until distributions are made from the fund.

"insured" means an individual and his/her spouse/civil partner provided—

- they were a married couple or registered civil partners at the date the policy was effected,
- annual premiums are paid by either or both of them during their joint lives and by the survivor of them during the life of the survivor, and
- the proceeds of the policy are payable on the death of such survivor, or on the

simultaneous deaths of such spouses/civil partners.

Where the proceeds of the policy are payable on the death of the surviving spouse/civil partner, “insured” means that surviving spouse/civil partner. The proceeds of the policy are deemed to have been provided by such survivor, as disponer.

Where the proceeds of the policy are payable on the simultaneous deaths of both spouses/civil partners, “insured” means each of the spouses/civil partners. Each such spouse/civil partner is deemed to have provided the proceeds of the policy to the extent that such proceeds are applied in paying the relevant tax of that spouse/civil partner.

Where the proceeds of the policy are not applied in paying relevant tax, each spouse/civil partner is deemed to have provided the proceeds of the policy to the extent that they are comprised in an inheritance taken under a disposition made by that spouse/civil partner.

“qualifying insurance policy” means a policy of insurance—

- which is in a form approved by the Revenue Commissioners for the purposes of the section (see paragraph 6 of the Statement of Practice SP-CAT/1/04 as regards the criteria for Revenue approval for policies issued on or after 29 May 1991);
- in respect of which annual premiums are paid by the insured during his/her life; and
- which is expressly effected under the section for the purpose of paying relevant tax.

“relevant tax” means approved retirement fund tax and inheritance tax payable in respect of an inheritance but excluding, in the computation of such tax, an interest in a qualifying insurance policy taken—

- on the death of the insured,
- under a disposition made by the insured, where the inheritance is taken on or after the date of death of the insured and not later than one year after that death, or
- under a disposition made by the spouse of the insured, where the inheritance is taken only in the event of the insured not surviving the spouse by a period of up to 31 days.

The qualifying insurance policy must be—

- a policy of insurance within the meaning of ***paragraphs (a)***, ***(b)*** or ***(c)*** of the definition of the term “insured” in ***subsection (1)***, or
- a policy of insurance, where the insured is an individual and the proceeds of the policy are payable only on the contingency of the insured surviving that spouse/civil partner.

An interest in a qualifying insurance policy comprised in an inheritance taken under a disposition made by the insured will be exempted from tax in relation to that inheritance, and will not be taken into account in computing tax, to the extent that the proceeds of the policy are applied in paying relevant tax (as defined). **(2)(a)**

An interest in a qualifying insurance policy which is comprised in an inheritance taken under a disposition made by the insured will, to the extent that the proceeds of the policy are not applied in paying relevant tax, be deemed to be taken on a day immediately after— **(2)(b)**

- the date of the death of the insured, or
- the latest date (if any) on which an inheritance is taken in respect of which that relevant tax is payable,

whichever is the later.

For the purposes of the section, a credit is given for the approved retirement fund tax paid by the qualifying fund manager. This ensures that the requirement that must be satisfied in ***subsection (2)(a)*** in order to obtain the exemption (i.e. that the proceeds of a qualifying insurance policy are applied in paying relevant tax) can be met. **(2)(c)**

Examples of situations where the section applies:

Example 1

Andrew Byrne died leaving an estate which included €75,000, being the proceeds of a qualifying insurance policy, payable to his personal representatives. In his will, he bequeathed the proceeds of the policy to his executor on trust to pay the relevant tax (within the meaning of ***section 72***) arising on his death, any balance of the proceeds to fall into his residuary estate. He bequeathed his residuary estate equally absolutely to his son, Dermot Byrne, to Dermot's wife Evelyn and to Dermot's son Robert.

In the first instance, the inheritance tax due is calculated in respect of the estate ignoring the proceeds of the policy.

Dermot's tax liability is Nil,

Evelyn's tax liability is €20,000,

Robert's tax liability is €40,000.

Evelyn and Robert receive legacies of €20,000 and €40,000 respectively from the proceeds of the policy to pay their tax. Those amounts are not liable to inheritance tax. The balance (€15,000) of the proceeds of the policy goes equally to Dermot, Evelyn and Robert and is taxed as an inheritance of €5,000 taken by each of them on the day after Andrew's death.

Dermot's tax on €5,000 is Nil,

Evelyn's tax on €5,000 is €1,000,

Robert's tax on €5,000 is €1,000.

Example 2

Michael Moran and his wife, Patricia, took out a qualifying insurance policy. The policy provided that the proceeds are to be payable, on the death of the survivor, to the personal representative of that survivor. Michael paid all the premiums during his life.

Michael died and, under the terms of his will, he left his entire estate to Patricia absolutely. Inheritance tax is not payable on the inheritance taken by Patricia (***section 71***). Patricia paid the premiums in respect of the policy after Michael's death. In her will, Patricia left all her property to her son, Henry. The policy can be used to pay the inheritance tax payable by Henry on Patricia's death.

Example 3

Edward Hanrahan took out a qualifying insurance policy during his life. In his will, he bequeathed his estate absolutely to his wife, Joan, but should she not survive him by 30 days, his estate was to pass absolutely to his son, Vincent. Edward and Joan were involved in a car accident. Edward died immediately and Joan died 10 days later. Vincent inherited Edward's estate absolutely under the terms of the will. The section ensures that the proceeds of a qualifying insurance policy, taken out by Edward during his life and payable on Joan's death, are available to pay Vincent's tax.

Example 4

William O'Connor left his estate to his niece, Catherine, for life, and, after her death, to her son, George, absolutely. The definition of "relevant tax" includes inheritance tax payable in this situation. If Catherine took out a qualifying insurance policy, the proceeds of that policy can be used to pay the inheritance tax arising on her death under the terms of William's will.

73 Relief in respect of certain policies of insurance relating to tax payable on gifts

Summary

This section grants exemption in respect of the proceeds of certain policies of insurance which are used to pay gift tax (or inheritance tax) arising in connection with a gift made by the insured. The minimum funding period is 8 years. An exception is made in relation to this period in the case of death or critical illness.

Details regarding the policies that qualify for exemption are set out in a Statement of Practice (SP-CAT/1/04).

Details

"appointed date" means— **(1)**

- a date at least 8 years after the date on which the policy was taken out, or
- where the insured becomes critically ill or dies before that date, the date on which either event occurs;

"insured" means—

- an individual, or
- in the case of a husband and wife/civil partners, one or both or the survivor of them;

"relevant insurance policy" means a policy—

- which is in a form approved by the Revenue Commissioners (see paragraph 6 of Statement of Practice SP-CAT/1/04 regarding the criteria for approval for policies issued on or after 29 May 1991);
- in respect of which annual premiums are paid by the insured;
- which will run for at least 8 years; and
- which is expressly taken out under the section for the purpose of paying relevant tax;

"relevant tax" means gift tax or inheritance tax payable in connection with a lifetime disposition made by the insured, within one year of the proceeds becoming payable, but excluding gift tax or inheritance tax on an appointment out of a discretionary trust set up by the insured in his/her lifetime.

Where a donor makes a gift to a donee, the latter is liable to pay gift tax on the gift (this becomes inheritance tax if the donor dies within 2 years of making the gift). Under ***section 87***, if the donor pays the gift tax, the donee takes a further gift which is also liable to gift tax. Where the proceeds of a relevant insurance policy are used to pay gift tax on a gift made by the insured, the proceeds themselves, to the extent that they are used to pay the tax, will be exempt from tax and will not be taken into account when computing tax. **(2)**

Where the insured makes a gift of part or all of the proceeds of a relevant insurance policy, otherwise than in paying relevant tax, the proceeds will be subject to tax, unless the gift is to a spouse (exempt under ***section 70***) or to a charity (exempt under ***section 76***). **(3)**

The proceeds of a relevant insurance policy taken out to pay gift tax can be used to pay inheritance tax if the insured, or one of the insured in the case where annual premiums are paid by either spouse during their joint lives, and by the survivor of them during the life of such survivor, dies before 8 years have elapsed since the policy was taken out. The policy must, however, meet the same requirements under ***section 72*** which it would have had to meet if it had been taken out to pay inheritance tax. **(4)**

The proceeds of an insurance policy taken out for the payment of inheritance tax can also be used to pay gift tax where the proceeds of such a policy are used to pay the tax arising under a disposition made by the insured during his/her lifetime within 1 year after the appointed date. If an insured takes out a policy under ***section 72***, he/she can make a gift of property rather than leave it by will. Provided that 8 years have elapsed between the date the policy was taken out and the date of the gift and provided that the proceeds of **(5)**

the policy are used to pay the relevant tax within 1 year after the date of the gift, he/she can use the proceeds to pay gift tax and qualify for the exemption.

Example

James Murphy takes out a policy that qualifies under ***section 72*** in 2003. He also made a will at that time leaving all his estate to beneficiaries named in his will. In 2012, he makes a gift of property to an individual who was not a person named in his will. He uses the proceeds of the policy to pay the tax in respect of the gift within 1 year of the making of the gift. The proceeds of the policy will qualify for exemption under ***section 73(5)***.

74 Exemption of certain policies of assurance

Summary

This section exempts certain policies of life assurance from capital acquisitions tax where both the disponer and beneficiary are foreign-domiciled and foreign-resident. If the disponer had purchased the policy prior to 15 February 2001, the exemption will apply where the proper law of the disposition was foreign and the donee or successor is neither domiciled nor ordinarily resident in the State at the date of the gift or inheritance.

Details

(1) "assurance company" has the meaning assigned to it by section 706 of the Taxes Consolidation Act 1997;

"new policy" means (a) a policy of assurance on the life of any person issued, or (b) a contract within the meaning of Article 2(2)(b) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 entered into, on or after 1 January 2001 by an assurance company in the course of carrying on the business of life assurance.
"old policy" means a contract entered into by an assurance company in the course of carrying on a foreign life assurance business within the meaning of section 451 of the Taxes Consolidation Act 1997 and issued on or after 1 December 1992 and before 1 January 2001.

(2) Any interest in a "new policy" or in an "old policy" comprised in a gift or inheritance will be exempt from tax where—

- the disponer is neither domiciled nor ordinarily resident in the State at the date of the disposition, and
- the beneficiary is neither domiciled nor ordinarily resident in the State at the time the gift or inheritance is taken.

(3) However, as respects policies purchased prior to 15 February 2001, which are taken by a foreign beneficiary as a gift or inheritance from an Irish disponer, the exemption will apply provided the proper law of the disposition was foreign. The "proper law" is the law governing the interpretation, construction or explanation of the words, intentions and presumptions of wills, deeds, contracts and other dispositions.

75 Exemption of specified collective investment undertakings

Summary

This section exempts from capital acquisitions tax units of a Common Contractual Fund (CCF), units in an Investment Undertaking which qualify for the collective funds regime introduced by section 58 of the Finance Act 2000 and units in a Collective Investment Scheme, where the disponer and beneficiary are foreign-domiciled and foreign-resident.

If the disponer had purchased units of an Investment Undertaking prior to 15 February 2001, the exemption will apply where the proper law of the disposition was foreign and the donee or successor is neither domiciled nor ordinarily resident in the State.

Details

(1) "collective investment scheme" means a *bona fide* scheme established solely or mainly to provide facilities for the participation by the public or other investors in profits or income arising from the acquisition, holding, management or disposal of securities or any other property;

"common contractual fund" has the meaning assigned to it by section 739I of the Taxes Consolidation Act 1997;

"investment undertaking" has the meaning assigned to it in section 739B of the Taxes Consolidation Act 1997;

" investment limited partnership" has the meaning assigned to it by section 739J of the Taxes Consolidation Act 1997;

"unit", in relation to a collective investment scheme, includes shares, members' interests, limited partnership interests and any other instruments granting an entitlement to the income or investments from the scheme;

"unit", in relation to a common contractual fund, has the meaning assigned to it by section 739I of the Taxes Consolidation Act 1997;

"unit", in relation to an investment undertaking, has the meaning assigned to it by section 739B of the Taxes Consolidation Act 1997.

"unit", in relation to an investment limited partnership, has the meaning assigned to it by section 739J of the Taxes Consolidation Act 1997

(2) Units of a Collective Investment Scheme which is incorporated or otherwise formed under the law of a territory outside the State, an Investment Undertaking or a Common Contractual Fund, which are comprised in a gift or an inheritance, will be exempt from tax where—

- the disponer is neither domiciled nor ordinarily resident in the State at the date of the disposition, and

- the beneficiary is neither domiciled nor ordinarily resident in the State at the time the gift or inheritance is taken.

However, as respects units of an Investment Undertaking purchased prior to 15 February 2001, which are taken by a foreign beneficiary as a gift or inheritance from an Irish disponer, the exemption will apply, provided the proper law of the disposition was foreign (see note on ***section 74(3)*** as regards the meaning of the term "proper law"). **(3)**

76 Provisions relating to charities, etc.

<u>Summary</u>

This section exempts gifts and inheritances taken for charitable purposes from tax. It also provides exemption for gifts and inheritances taken by the State and other public bodies and for any application of public funds.

<u>Details</u>

Public or charitable organisations, trustees, etc., are placed in the position of stranger-in-blood to the disponer. **(1)**

Exemption is granted to a gift or an inheritance which is taken for public or charitable purposes to the extent that the Revenue Commissioners are satisfied that it has been, or will be, applied to purposes which are regarded as public or charitable according to the law of the State. **(2)**

Exemption is granted to a gift or an inheritance which a person takes on becoming entitled to any benefit on the application to public or charitable purposes of property (including moneys provided by the Oireachtas or a local authority). However, the exemption does not apply where public moneys are applied for a person's benefit under a superannuation scheme which is administered by a public or charitable body. **(3)**

77 Exemption of heritage property

<u>Summary</u>

This section exempts from capital acquisitions tax houses and gardens and objects of national, scientific, historic or artistic interest subject to certain conditions.

<u>Details</u>

Exemption is granted to pictures, prints, books, manuscripts, works of art, jewellery, scientific collections and other things not held for trading which appear to the Revenue Commissioners to be of national, scientific, historic or artistic interest, which are kept permanently in the State (except for such temporary absences outside the State as are approved by the Revenue Commissioners) and in respect of which reasonable facilities for viewing are available to the public, recognised bodies or associations of persons. In general, the Revenue Commissioners will be guided by the views of experts in deciding whether the relevant items are of national, scientific, historic or artistic interest. Full details of any temporary absences of the objects to which the subsection applies should **(1)**

be furnished to the Revenue Commissioners in order that the matter can be considered by them.

To qualify for the exemption, the objects referred to in ***subsection (1)*** must form part of the gift or inheritance both at the date of the gift or inheritance and at the valuation date. **(2)**

Heritage property appropriated by an executor in or towards satisfaction of a particular bequest qualifies for exemption, notwithstanding that it was not part of the bequest in question.

The exemption will be clawed back if an object is sold within 6 years after the valuation date and before the death of the donee or successor. However, the exemption will continue to apply if the sale of the object is a sale by private treaty to the Chester Beatty Library, the Crawford Art Gallery Cork, the Irish Museum of Modern Art, the National Archives, the National Concert Hall, the National Gallery of Ireland, the National Library of Ireland, the National Museum of Ireland, the Commissioners of Public Works in Ireland, the Irish Heritage Trust, any university in the State or any constituent college of that university, a local authority or the Friends of the National Collections of Ireland. **(3)**

The exemption will also be clawed back if at any time after the valuation date and— **(4)**

- before the sale of the object, (a)
- before the death of the donee or successor, and (b)
- before such object again forms part of the property comprised in a gift or inheritance (other than an inheritance to which the 1% charge imposed on certain discretionary trusts by ***section 20*** applies) where the subsequent donee or successor (not being the spouse/civil partner of the first-mentioned donee or successor) takes an absolute interest in the object, (c)

there has been a breach of a condition relating to such object being kept permanently in the State (except for temporary absences outside the State which are approved by the Revenue Commissioners – see note on ***subsection (1)***) or in respect of facilities for viewing such objects.

Any work of art normally kept outside the State, which would not be charged to tax but for the fact that it is situated here on the relevant date, will be exempt from tax if brought into the State solely for public exhibition, cleaning or restoration. **(5)**

Subsections (2) to ***(4)*** will apply, subject to certain modifications, as they apply to the objects specified in ***subsection (1)***, to a house or garden that is situated in the State and is not held for the purpose of trading and— **(6)**

- which, on a claim being made to the Revenue Commissioners, appears to them to be of national, scientific, historic or artistic interest, (a)
- in respect of which reasonable facilities for viewing were allowed to members of the public during the 3 years immediately before the date of the gift or inheritance, and (b)

- in respect of which reasonable facilities for viewing are allowed to members of the public. (c)

A claim for exemption will involve—

- an application to the Revenue Commissioners,
- an inventory of items in respect of which exemption is being claimed,
- a valuation of the items, and
- the grounds for the exemption, stating where the relevant items can be seen by the public and attaching any other relevant material in support of the claim e.g. advertisements.

The provision of facilities for viewing by members of the public of a house or garden is not regarded as reasonable unless full details of opening hours and admission prices have been notified to the National Tourism Development Authority (trading as Fáilte Ireland) before 1 January each year. The house or garden must be open to the public for at least 60 days (of which 40 days must be in the period from 1 May to 30 September) in order to obtain the exemption. Not less than 10 of the 40 days must fall on a Saturday or a Sunday. Reasonable access must be afforded to the house or garden and the price must be reasonable. **(7)**

78 Heritage property of companies

Summary

This section ensures that shares in a family-controlled private company are exempt from tax to the extent that their value is derived from heritage property that would qualify under ***section 77*** if the property was heritage property not owned by a company. The exemption will only apply where the heritage property is owned by the company on or before 12 April 1995.

Details

"relevant heritage property" means heritage property (including a house or garden) which would be exempt from tax if the heritage property itself (rather than shares in a company owning the heritage property) were comprised in the gift or inheritance; **(1)**

"private company" and "subsidiary" are self-explanatory.

Where a gift or inheritance consists of shares in a company, those shares will be entitled to exemption from tax to the extent that their value is derived from relevant heritage property. Where the heritage property is acquired by the company after 12 April 1995, the exemption will not apply. **(2)**

Company shares appropriated by an executor in or towards satisfaction of a particular bequest qualify for exemption, notwithstanding that they were not part of the bequest in question. **(3)**

Where part of a share is exempt under this section and the share itself qualifies for business relief, then the value attributable to the heritage property does not also qualify for business relief. **(4)**

A clawback will apply where the company share in question is sold within 6 years after the valuation date, and before the death of the donee or successor. **(5)**

A clawback will also apply where— **(6)**

- the heritage property is sold within 6 years after the valuation date and before the death of the donee or successor, or
- there has been a breach of the public access conditions prior to the death of the donee or successor, and prior to a sale (or another gift or inheritance to someone other than the spouse/civil partner of the donee or successor) of the company share or item of heritage property.

Notwithstanding ***subsections (5)*** and ***(6)***, the exemption will continue to apply if the sale of the share or the item of relevant heritage property (as the case may be) is a sale by private treaty to the Chester Beatty Library, the Crawford Art Gallery Cork, the Irish Museum of Modern Art, the National Archives, the National Concert Hall, the National Gallery of Ireland, the National Library of Ireland, the National Museum of Ireland, any university in the State or any constituent college of such university, a local authority or the Friends of the National Collections of Ireland. **(7)**

79 Exemption of certain inheritances taken by parents

This section exempts from inheritance tax an inheritance taken by a parent from a child on the death of that child where the child had taken a non-exempt gift or inheritance from either or both of his/her parents within the period of 5 years immediately prior to the death of the child.

80 Payments relating to retirement, etc.

Summary

This section exempts from capital acquisitions tax payments by way of retirement benefit, redundancy payments or pension paid by an employer to an employee although, in certain circumstances, excessive payments may be taxed.

The section also provides that benefits taken by persons other than the employee himself/herself, arising under a superannuation fund or scheme, are deemed to be taken from the employee, as disponer.

Details

"superannuation scheme" includes any arrangement in connection with employment for the provision of a benefit or in connection with the retirement or death of an employee; **(1)**

"employment" includes employment as a director of a body corporate (e.g. a company) and related words are construed accordingly.

Exemption is granted to bona fide retirement benefits, redundancy payments and pensions. This exemption is, however, subject to the provisions of ***subsection (3)***. **(2)**

The Revenue Commissioners can treat excessive "golden handshakes", etc. as partly taxable where the employer and employee are related or the employee "controls" the private company which is the employer (see note on ***section 27*** regarding "control"). If the payment is made under an approved scheme, it will not be taxable. **(3)**

A person who is aggrieved by a decision of the Revenue Commissioners not to grant the exemption has the right to appeal to the Appeal Commissioners, with a right of further appeal to the Courts. **(4)**

Annuities or lump sums arising in favour of persons other than the employee under a superannuation fund or scheme will be treated as coming, not from the employer, but from the employee. **(5)**

81 Exemption of certain securities

Summary

This section exempts from gift and inheritance tax gifts and inheritances of certain Government and other securities (including units in certain unit trusts) issued with a condition that they be exempt from tax when in the beneficial ownership of persons neither domiciled nor ordinarily resident in this country. In order to qualify for the exemption, the securities or units must be held by the disponer for 6 years prior to the date of the gift or inheritance (15 years where the securities were acquired on or after 24 February 2003), unless the disponer was neither domiciled nor ordinarily resident in this country at the date of the disposition, or the securities or units were owned by the disponer prior to 26 March 1997, or became subject to the disposition before that date, and the disponer was neither domiciled nor ordinarily resident in this country at the date of the gift or inheritance.

The securities or units must be comprised in the gift or inheritance at the date of the gift or inheritance and at the valuation date.

Where the securities or units were acquired prior to 15 February 2001, the period during which the securities or units must be held in order to qualify for the exemption is 3 years.

Details

"security" means any security, stock, share, debenture, debenture stock, certificate of charge or other form of security issued before, on, or after the passing of the Act and which by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment is exempt from tax when in the beneficial ownership of a person neither domiciled nor ordinarily resident in the State; **(1)**

"unit trust scheme" means an authorised unit trust scheme within the meaning of the Unit Trusts Act 1990, whose deed restricts the property subject to those trusts to securities.

Qualifying securities or units comprised in a gift or inheritance are exempt from capital acquisitions tax if it is shown that—

- the securities or units were comprised in the disposition (e.g. where they were held by a trust) continuously for a period of 6 years prior to the date of the gift or inheritance. [Where the securities or units were acquired on or after 24 February 2003, the relevant period is 15 years.] A period immediately before the date of the disposition during which the stock was in the beneficial ownership of the disponer is treated as part of the period during which it was comprised in the disposition, (2)(a)

- the securities or units must have been comprised in the gift or inheritance both at the date of the gift or inheritance and at the valuation date, and (2)(b)

- the donee or successor is, at the date of the gift or inheritance, neither domiciled nor ordinarily resident in the State. (2)(c)

Where, in the administration of an estate, an exempt security or unit is appropriated in satisfaction of a benefit, the security or unit will be deemed, for the purposes of ***subsection (2)***, to be comprised in the gift or inheritance at the date of the gift or inheritance, provided it formed part of the estate at the date of the gift or inheritance.

The requirement that the securities or units be comprised in the disposition for the 6 year period will not apply where the disponer was neither domiciled nor ordinarily resident in the State at the date of the disposition or, in the case of securities or units purchased before 26 March 1997, where the disponer was neither domiciled nor ordinarily resident in the State at the date of the gift or inheritance. **(3)**

Where the securities or units were acquired prior to 15 February 2001, the period during which the securities or units must be held in order to qualify for the exemption is 3 years rather than the normal 6 year or 15 year period. **(4)**

82 Exemption of certain receipts

<u>Summary</u>

This section grants exemption from capital acquisitions tax for compensation and damages, winnings from betting, lotteries, etc., certain payments in bankruptcy matters, certain normal and reasonable payments within the family, certain payments to incapacitated individuals and normal and reasonable payments from trusts towards the support, maintenance or education of minor orphaned children of the disponer.

<u>Details</u>

Compensation or damages for the following are exempt from tax:

- any tort such as personal injuries, damage to property, libel, etc., (1)(a)

- damages received by a person arising out of the death of another person. . (1)(b)

It is not required that compensation or damages be awarded by a court. It is sufficient that the benefit be received by way of bona fide compensation or damages, whether awarded by a court or agreed by compromise.

Bona fide winnings from wagers, lotteries, etc. are exempt from tax as are payments from the competition "Your Country, Your Call" launched by the President on 17 February 2010. **(1)(c), (ca)**

Any benefit arising out of— **(1)(d)**

- the payment to the Official Assignee in Bankruptcy of money which has been provided by, or which represents property provided by, friends of a bankrupt, or
- a remission or abatement of debts by the creditors of a bankrupt to fulfil an offer of composition after bankruptcy in accordance with section 39 of the Bankruptcy Act 1988,

is also exempt from gift or inheritance tax.

Gift or inheritance tax will not be payable on: **(1)(e)**

- sums provided by friends, or
- sums foregone by creditors,

of an arranging debtor, to enable him/her to fulfil a proposal being made by him/her under section 87 of the Bankruptcy Act 1988 for the future payment or compromise of his/her debts where such proposal is—

- accepted by his/her creditors, and
- approved by the Courts.

This deals with a situation similar to that dealt with in ***subsection (1)(d)***.

Any payments made for the benefit of a dependent which could reasonably be described as normal maintenance and education expenses are exempt from tax. The payments which come within the scope of the exemption are payments which are part of the normal expenditure of the disponer and are reasonable having regard to that disponer's financial circumstances generally. Post FA 2014 the recipients covered are— **(2)**

- 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 and is receiving full-time education or instruction at any university, college, school or other educational establishment, or who, regardless of age, is permanently incapacitated by reason of physical or mental infirmity from maintaining himself or herself.

- a person to whom the disponer is *in loco parentis*;
- a dependent relative under section 466 of the Taxes Consolidation Act 1997 (this covers a relative of the disponer, or of his/her spouse/civil partner, who is incapacitated by old age or infirmity, or the widowed mother or widowed father/surviving civil partner of the disponer, or of his/her spouse/civil partner whether incapacitated or not, whose total income does not exceed a specified amount and who is maintained at his/her own expense by the disponer).

The receipt by a permanently incapacitated individual of funds which are held on a qualifying trust, or of income deriving from funds held on such a trust, is not subject to capital acquisitions tax. **(3)**

A qualifying trust is a trust which has been established by deed:

- exclusively for the benefit of one or more named incapacitated individuals;
- where the trustees hold the trust funds for the benefit of the named incapacitated individual or individuals;
- where, in the event of the death of the named incapacitated individual or individuals, the undistributed part of the trust funds are to be applied for charitable purposes.

The receipt by a minor child/child of a civil partner or also, post FA 2014, by a child/child of a civil partner up to the age of 25 if in full-time education or by a child who, regardless of age, is permanently incapacitated by reason of physical or mental infirmity of money or money's worth for support, maintenance or education from a deceased parent/civil partner, where the other parent/civil partner is also deceased, will not be regarded as a gift or inheritance on condition that: **(4)**

- the provision of support, maintenance or education is such as would be part of the normal expenditure of a person in the circumstances of the parent/civil partner prior to his/her death, and
- is reasonable having regard to the financial circumstances of the parent/civil partner prior to his/her death.

83 Exemption where disposition was made by the donee or successor

<u>Summary</u>

Where a donee or successor takes a gift or inheritance under a disposition made by

himself/herself, no charge to tax will arise. This principle also applies to holding companies and their subsidiaries.

Details

“company” means a body corporate (wherever incorporated) other than a private company within the meaning of ***section 27***. **(1)**

A gift or an inheritance taken by a donee or successor under a disposition made by that donee or successor is exempt from capital acquisitions tax. **(2)**

Where, at the date of the gift, 2 companies are associated in the manner described in ***subsection (4)***, a gift taken by one of them under a disposition made by the other will be exempt from capital acquisitions tax. **(3)**

2 companies will be regarded as associated for the purposes of ***subsection (3)*** if: **(4)**

- one company would be beneficially entitled to not less than 90% of any assets of the other company available for distribution to the owners of its shares and entitlements of the kind referred to in ***section 43(2)*** on a winding up, or
- a third company would be beneficially entitled to not less than 90% of the assets available for distribution and belonging to each of the other 2 companies concerned.

84 Exemption relating to qualifying expenses of incapacitated persons

Summary

This section provides exemption from capital acquisitions tax for gifts and inheritances taken exclusively for the purpose of discharging the medical expenses and associated maintenance costs of a permanently incapacitated individual.

Details

“qualifying expenses” is defined as expenses relating to medical care, including the cost of maintenance in connection with such medical care. **(1)**

A gift or an inheritance which is taken exclusively for the purpose of discharging qualifying expenses of an individual who is permanently incapacitated by reason of physical or mental infirmity is exempt from tax. The exemption applies to the extent that the Revenue Commissioners are satisfied that it has been or will be applied to such purpose. The entitlement to exemption will depend on the facts and circumstances of each case. **(2)**

85 Exemption relating to retirement benefits

Summary

This section exempts from inheritance tax any balance in an “approved retirement fund” or in an “approved minimum retirement fund” or in a “Personal Retirement Savings

Account” which passes on the death of a pensioner, or on the death of a predeceased pensioner’s spouse/civil partner, to a child of his/hers who is over the age of 21 years where that balance is liable to income tax.

Details

The purpose of this section is to ensure that any balance in an “approved retirement fund” or in an “approved minimum retirement fund” which passes on the death of the pensioner will be exempt from capital acquisitions tax if inherited by a child of the pensioner who is over 21 years of age at that time. Where the fund is inherited by the spouse/civil partner of the pensioner and held by the surviving spouse/civil partner in an approved fund, any balance in the fund which is inherited by a child of the surviving spouse/civil partner on the subsequent death of the surviving spouse/civil partner will also, under this section, be exempt from capital acquisitions tax if the child is over 21 years at that time. Where the child is under 21 years of age when he/she inherits the fund, capital acquisitions tax will be payable under the normal rules and subject to existing thresholds. **(1), (2)**

Any balance in the fund passing on death to children over 21 years of age will be subject to income tax at 41% (or, at the special rate of 20%, when taken on the death of a surviving spouse/civil partner of the pensioner). The intention behind this section is to avoid double taxation in respect of retirement funds inherited by children of a pensioner.

86 Exemption relating to certain dwellings

Summary

This section provides that gifts or inheritances of a dwelling-house taken on or after 1 December 1999, will be exempt from capital acquisitions tax provided the following conditions are complied with:

- the recipient must have occupied the dwelling-house continuously as his/her only or main residence for a period of 3 years prior to the date of the gift or inheritance. Where the dwelling-house has directly or indirectly replaced other property, this condition may be satisfied where the recipient has continuously occupied both properties as his/her only or main residence for a total period of 3 out of the 4 years immediately prior to the date of the gift or inheritance;

- the recipient must not, at the date of the gift or inheritance, be beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house; and

- the recipient must continue, except where such recipient was aged 55 years at the date of the gift or inheritance or has died, to occupy that dwelling-house as his/her only or main residence for a period of 6 years commencing on the date of the gift or inheritance i.e. the relevant period.

Any period of occupation by a beneficiary of a gift of a house that was during that period the disponer’s only or main residence will not be regarded as a period of occupation in the house prior to the gift of that house unless the disponer is compelled, by reason of old age or infirmity, to depend on the services of the beneficiary for that period. The house that is gifted, or any house that it replaced, must be owned by the disponer for the

relevant 3-year period prior to the gift.

A recipient absent during any time in the relevant period because of working abroad is considered to remain in continuous occupation of that dwelling-house. The exemption will not be withdrawn where a breach of the condition regarding occupation subsequent to the gift or inheritance is as a result of the recipient requiring long-term medical care in a hospital, nursing home or convalescent home, or as a result of a condition being imposed by an employer on a recipient to reside elsewhere.

The exemption will be withdrawn where the recipient sells or otherwise disposes of the dwelling-house within the relevant period, unless the sale or disposal is as a result of the recipient requiring long-term medical care in a hospital, nursing home or convalescent home, or unless the recipient was aged 55 years or over at the date of the gift or inheritance. However, where the recipient sells or disposes of the dwelling-house and invests some or all of the proceeds in a replacement dwelling-house and continuously occupies both for a total period of 6 out of the 7 years commencing on the date of the gift or inheritance, the clawback will be limited to the extent of the proceeds of the sale or disposal not invested in the replacement dwelling-house.

<u>Details</u>

"dwelling-house" is defined as a building or part of a building used or suitable for use as a dwelling together with a curtilage of up to one acre; **(1)**

"relevant period" is defined as the period of 6 years commencing on the date of a gift or inheritance of a dwelling-house.

Where a remainderman predeceases a life tenant and 2 charges for capital acquisitions tax arise on the death of the life tenant, the capital acquisitions tax on the first inheritance is allowed as a credit against the capital acquisitions tax on the second inheritance. This provision ensures that where the second inheritance qualifies for dwelling-house relief, the first inheritance will also qualify. **(2)**

Subject to ***subsections*** ***(4)***, ***(5)***, ***(6)*** and ***(7)***, the exemption will apply to a gift or inheritance of a dwelling-house taken by a beneficiary who fulfils the following conditions: **(3)**

- the beneficiary must have continuously occupied the dwelling-house as his/her only or main residence for the period of 3 years immediately preceding the date of the gift or inheritance, or, where the dwelling-house has replaced a previous property, the beneficiary must have continuously occupied both properties for periods which together comprise 3 of the 4 years immediately preceding the date of the gift or inheritance; (3)(a)
- at the date of the gift or inheritance of the dwelling-house, the beneficiary must not own any other dwelling-house or any interest in any other dwelling-house; and (3)(b)
- the beneficiary must occupy the dwelling-house as his/her only or main residence for a period of 6 years after the date of the gift or inheritance. (3)(c)

For the purposes of ***subsection (3)(a)***, any period during which a beneficiary of a gift of a house occupies a house that was during that period the disponer's only or main residence will not be regarded as a period of occupation in the house by that beneficiary unless the disponer is compelled, by reason of old age or infirmity, to depend on the services of the beneficiary for that period. **(3A)(a)**

The house that is gifted, or any house that it replaced, must be owned by the disponer for the relevant 3-year period prior to the gift. **(3A)(b), (c)**

The 6 year occupancy condition contained in ***subsection (3)(c)*** will not apply where the beneficiary is 55 years or over on the date of the gift or inheritance. **(4)**

A beneficiary who is employed abroad will be deemed to occupy a dwelling-house during the period of that employment for the purposes of the 6 year occupation condition contained in ***subsection (3)(c)***. **(5)**

A clawback of the exemption granted under ***subsection (3)*** will arise where all or part of the dwelling-house is sold or otherwise disposed of within 6 years of the date of the gift or inheritance and before the death of the beneficiary. The exemption will not be lost, however, where the beneficiary was 55 years or over on the date of the gift or inheritance or where the sale or disposal of the dwelling-house was made because the beneficiary required long-term medical care in a hospital, nursing-home or convalescent home. **(6)**

A clawback of the exemption granted under ***subsection (3)*** will also arise where the beneficiary fails to occupy the dwelling-house as his/her only or main residence for the 6 year period specified in ***subsection (3)(c)***. The exemption will not be lost, however, where the beneficiary fails to fulfil the 6 year occupancy condition because he/she requires long-term medical care in a hospital, nursing home or convalescent home or because he/she is obliged by an employer to reside elsewhere. **(7)**

Where an exempt dwelling-house is replaced by another dwelling-house within the 6 year relevant period, the requirement that the beneficiary must occupy the first dwelling-house as his/her only or main residence for the duration of the relevant period will be satisfied if he/she occupies the first and any subsequent replacement dwelling-houses for a total of 6 out of the 7 years commencing on the date of the gift or inheritance. **(8)**

The occupancy requirement specified in ***subsection (8)*** will not be breached where the beneficiary is absent because he/she is: **(9)**

- employed abroad;
- requires long-term medical care in a hospital, nursing home or convalescent home; or
- is obliged by an employer to reside elsewhere.

The clawback provision contained in ***subsection (6)*** will not apply where an exempt dwelling-house is sold or disposed of and replaced by another dwelling-house in accordance with ***subsection (8)***. However, this disapplication of the clawback applies only to the extent of the proceeds of the sale or disposal which are invested in the replacement dwelling-house. **(10)**

87 Exemption of certain benefits

This section provides that where a gift or inheritance is taken by direction of the disponer free of tax, the benefit taken is deemed to include the amount of tax chargeable on the gift or inheritance, but not the amount of tax chargeable on such tax.

Example

B receives a gift from A free of tax. The tax on the gift is €20,000. The benefit is deemed to consist of the benefit and the amount of tax chargeable on that benefit.

88 Exemption of certain transfers from capital acquisitions tax following dissolution of marriage or civil partnership

Summary

This section grants exemption from capital acquisitions tax in respect of certain transfers of property between persons under the Family Law Act 1995,the Family Law (Divorce) Act 1996 and Civil Partnership and Certain Rights and Cohabitants Act 2010 and similar transfers made outside the State under legislation analogous to those Acts.

Details

The section exempts all transfers of property from one person to the other from gift tax and inheritance tax where those persons have separated or divorced or where a civil partnership has been dissolved and the transfer is made pursuant to certain court orders. **(1)**

The court orders to which the section applies are as follows:

- a relief order or an order under section 25 of the Family Law Act 1995 and a maintenance pending relief order (these are orders relating to payments for the maintenance of dependents, etc. which are made by an Irish court following a legal separation or the dissolution of a marriage, as the case may be, in a jurisdiction outside the State), (2)(a), (b)
- an order referred to in section 41(a) of the Family Law Act 1995 (section 41 deals with maintenance orders for a spouse and children), or an order under section 42(1) of that Act (section 42 deals with lump sum maintenance orders for a spouse and children) made in addition to or instead of an order under section 41(a) of that Act, in favour of a spouse whose marriage has been dissolved, (2)(c)
- an order under Part III of the Family Law (Divorce) Act 1996 (which deals with preliminary and ancillary orders after proceedings for divorce), (2)(d)

  an order under Part 12 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, and (2)(e)
- analogous orders, made on or after 10 February 2000, by a foreign court consequent on a foreign divorce which is recognised as valid by the Irish Courts. (2)(f)

88A Certain transfers by qualified cohabitants

This section exempts transfers made by a qualified cohabitant to another qualified cohabitant under Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. These orders relate to the transfer of property, maintenance payments, etc.

Qualified cohabitants are former cohabitants who have been in a relationship with another person for a minimum period of 5 years (2 years where they are parents of one or more dependent children), whose relationship has ended by death or separation and neither of whom was married to and living with another person in 4 of the 5 years immediately before the relationship ended.

PART 10 RELIEFS

Overview

This Part deals with the reliefs applying to gifts and inheritances of agricultural property and business property. It also contains other miscellaneous reliefs.

Chapter 1 sets out the relief available to gifts and inheritances of agricultural property. A deduction of 90% is given from the market value of the property in order to arrive at its "agricultural value". In order to qualify for the relief, the donee or successor must be a farmer (as defined). The relief will be withdrawn if agricultural land is disposed of or compulsorily purchased within 6 years of the date of the gift or inheritance and is not replaced, within 1 year of the disposal or within 6 years of the compulsory purchase, by other agricultural property.

Chapter 2 sets out the relief available to gifts and inheritances of certain business property. The taxable value of such property is reduced by 90%. In order to qualify for the relief, the business concerned must not consist wholly or mainly of dealing in land, shares, securities, or currencies or of making or holding investments. The relief will extend to all the activities of the business (i.e. trading, professional, etc.) other than dealing in land, shares, securities or currencies or making or holding investments. In the case of sole traders and partnerships, the relief will apply to the value of the net assets which are used in the course of a qualifying business activity. In the case of companies, the relief will apply to that proportion of the value of the shares or securities of the company which are derived from a qualifying business activity. Assets which are not used for the purposes of a qualifying business activity will not be entitled to the relief. Quoted shares or securities will not generally qualify for the relief.

The business property must have been owned by the disponer for a minimum period prior to the gift or inheritance and, where the business property consists of shares or securities in a company, the donee or successor must hold a minimum interest in the business after taking the gift or inheritance.

The relief may be withdrawn in whole or in part if, within 6 years after the gift or inheritance, the business ceases to be a qualifying business (other than in the case of a bona fide winding up) or if the relevant business property is sold, leased, redeemed or compulsorily acquired and not replaced within a year by other qualifying business property. The relief will be reduced (in the same proportion that the market value of the replacement property bears to the market value of the original property) where the original property has been replaced, directly or indirectly, by other property and the market value of the original property is greater than the market value of the property which replaced it.

Chapter 2A provides for a clawback of agricultural relief or business relief, as the case may be, which has been granted in respect of development land (as defined) where such property is sold in the period commencing 6 years after the date of the gift or inheritance and ending 10 years after that date. The relief will be clawed back in respect of the development value of the property.

Chapter 3 contains other miscellaneous reliefs, i.e. relief from double aggregation, credit for capital gains tax on the same event, allowance for prior tax on the same event and relief from double taxation.

CHAPTER 1

Agricultural relief

89 Provisions relating to agricultural property

Summary

This section grants relief in respect of agricultural property where such property is taken by a "farmer", who is defined for the purposes of the section as an individual in respect of whom not less than 80% of his/her gross property in possession consists of agricultural property after taking the gift or inheritance. For the purpose of the 80% test, no deduction is made from the market value of property for any debts or encumbrances except for debts or encumbrances in respect of an off-farm house which is the beneficiary's only or main residence.

Where the donee or successor qualifies as a "farmer", a deduction of 90% is allowed from the market value of agricultural property in order to arrive at its "agricultural value". Agricultural relief is granted to timber without the requirement that the donee or successor must satisfy the "farmer" test.

Where agricultural relief has been granted, the section provides that only the same proportion of the liabilities, costs and expenses that relate to the part of the agricultural property that has not been granted agricultural relief will be allowed for the purposes of calculating the taxable value of that property.

The agricultural value will cease to apply to land that is disposed of or compulsorily acquired within 6 years of the date of the gift or inheritance and is not replaced, within 1 year of the disposal or within 6 years of the compulsory acquisition, by other agricultural property. However, land that a spouse had transferred to his or her spouse will not qualify as replacement property for this purpose. Where the proceeds from a disposal or compulsory acquisition of all or part of the land are not fully expended in acquiring other agricultural property within the time limits referred to, relief will be clawed back in respect of the proceeds not re-invested in acquiring other agricultural property.

Details

(1) "agricultural property" means agricultural land, pasture and woodland located in a Member State of the EU and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such property) as are of a character appropriate to the property and farm machinery, livestock and bloodstock on such property and the EU Single Farm Payment Entitlement;

"agricultural value" means the market value of agricultural property reduced by 90% of that value;

"farmer", in relation to a donee or successor, means an individual in respect of whom not less than 80% of the market value of the property to which the individual is beneficially entitled in possession is represented by the market value of property in a Member State of the EU which consists of agricultural property. However, for the purposes of the definition:

- no reduction is made from the market value of property for any debts and encumbrances except debts or encumbrances in respect of an off-farm house which is the beneficiary's only or main residence. . A loan secured on such an off-farm main residence dwelling-house which is not used to purchase, repair or improve that dwelling-house will not be treated as a debt or an incumbrance and

- an individual will be deemed to be beneficially entitled in possession to:

  an interest in expectancy, notwithstanding the definition of "entitled in possession" in ***section 2***, and

  property which is subject to a discretionary trust under a disposition made by the individual where the individual is also an object of the trust.

  Finance Act 2014 provides for a further requirement under the definition of "farmer" to ensure that agricultural relief is more effectively targeted at individual's who inherit or who are gifted agricultural property and who actively farm it themselves or who lease it on a long-term basis to active farmers.

  To qualify for agricultural relief the beneficiary or lessee must 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) on a commercial basis and with a view to the realisation of profits from that agricultural property.

  Agricultural relief will also apply to a beneficiary if that beneficiary is the holder of any of the qualifications set out in Schedule 2, 2A or 2B to the Stamp Duties Consolidation Act 1999 (in relation to young trained farmers) or who achieves such a qualification within a period of 4 years from the date of the gift or inheritance, and who, for a period of not less than six years, farms the agricultural property on a commercial basis and with a view to the realisation of profits from that agricultural property. The amendment is designed to ensure that beneficiaries who hold educational qualifications in agriculture and who are productive farmers but who are not in a position to spend not less than 50 per cent of their normal working time farming the agricultural property can also avail of the relief.

  The purpose of the F.A. 2014 amendment is to ensure productive use of agricultural property. The amendment also provides for the claw-back of the relief if the additional conditions as regards use of the agricultural property are not satisfied for a period of not less than six years.

(2) The provisions of ***section 28*** (dealing with the "taxable value" of all property other than "agricultural property") apply to agricultural property, except that the "agricultural value" is substituted for the "market value". For the provisions to apply:

- the gift or inheritance must comprise agricultural property (as defined) at the date of the gift or the date of the inheritance and at the valuation date, and
- the donee or successor must be a farmer (as defined) on the valuation date.

The "incumbrance-free" value will be arrived at on the same basis as in ***section 28***. However, where any liability or consideration has to be deducted in arriving at the incumbrance-free value or the taxable value, only 10% of such value may be deducted.

Where a donee or successor receives a gift or inheritance subject to the condition that it is to be invested in whole or in part in agricultural property, the gift or inheritance will qualify for agricultural relief as if it consisted of agricultural property: **(3)**

- at the date of the gift or inheritance, and
- at the valuation date,

if the condition has been complied with within 2 years of the gift or inheritance.

The relief under this section will be withdrawn if, within 6 years after the date of the gift or the date of the inheritance the agricultural property (other than crops, trees or underwood) is disposed of or compulsorily acquired in the lifetime of the donee or successor and is not replaced, within a year of such disposal (or within 6 years in the case of a compulsory acquisition), by other agricultural property. Where all or part of the proceeds of the property in respect of which relief was granted are not fully expended in acquiring other agricultural property within the time limits referred to, relief will be clawed back in respect of the amount of the proceeds not re-invested. **(4)(a), (aa)**

The proceeds from a disposal include an amount equal to the market value of the consideration other than cash received for the disposal.

If an arrangement is made, in the course of administration, under which agricultural property is appropriated to a successor (e.g. where all the next-of-kin agree that one of them should take the land and the others take the cash), such an arrangement is deemed not to be a disposal or a compulsory acquisition for the purposes of ***subsection (4)(a)***. **(4)(b)**

Where the proceeds referred to in ***subparagraph (ii)*** of ***subsection (4)(a)*** are expended in acquiring agricultural property which has been transferred by the donee or successor to his or her spouse/civil partner, such property will not be treated as "other agricultural property" for the purposes of that subparagraph. **(4A)**

A personal representative may appropriate a holding of agricultural property in satisfaction of a legacy under section 55 of the Succession Act 1965. Section 55 of the Succession Act 1965 deals with the powers of the personal representatives to appropriate any part of the estate of a deceased person in satisfaction of any share in the estate. If the agricultural property was part of the deceased person's estate at the date of his/her death (i.e. the date of the inheritance), the appropriation will be retrospective to that date. This will enable the legatee to qualify under ***subsection (2)*** by treating that agricultural **(5)**

property as being comprised in his/her inheritance at the date of the inheritance and at the valuation date.

Agricultural relief is afforded to trees and underwood comprised in a gift or inheritance taken by a donee or successor who does not meet the requirement of being a "farmer" within the meaning of the definition in ***subsection (1)***. The relief applies to growing trees and underwood only and not to the land on which they are growing. **(6)**

The relief applies to a transferee referred to in ***section 32(2)***. **(7)**

Example

Land is left to A for life and, on A's death, to B. B dies before A, leaving land to C. Under ***section 32(2)***, C takes as transferee from B on A's death, but for tax purposes C will step into B's shoes. However, as B is dead, the "farmer" test is related to C.

CHAPTER 2

Business relief

*90 Interpretation (***Chapter 2***)*

Summary

This section defines the terms used in this Chapter.

Details

"agricultural property" has the meaning assigned to it by ***section 89***; **(1)**

"associated company" has the meaning assigned to it by section 16(1)(b) of the Companies (Amendment) Act 1986. The term "associated company" means an interest of a company holding a qualifying capital interest equal to 20% or more of all such interests in an undertaking that is not strictly an undertaking relating to a subsidiary company;

"business" includes a business carried on in the exercise of a profession or vocation, but does not include a business carried on otherwise than for gain;

"excepted asset" is construed in accordance with ***section 100***;

"full-time working officer or employee", in relation to one or more companies, means any officer or employee who devotes substantially the whole of his/her time to the service of that company, or those companies taken together, in a managerial or technical capacity;

"holding company" and "subsidiary" have the meanings assigned to them, respectively, by section 155 of the Companies Act 1963. Section 155(4) provides that a company shall be deemed to be another company's holding company if that other company is its subsidiary. Section 155(1) provides that a company is a subsidiary of a holding company if the holding company:

- is a member of and controls the board of directors,
- owns more than half in nominal value of the equity share capital, or
- owns more than half of the nominal value of the voting shares;

"quoted", in relation to any shares or securities, means quoted on a recognised stock exchange and "unquoted", in relation to any shares or securities, means not so quoted (a recognised stock exchange is a stock exchange where shares in a public company can be bought and sold);

"relevant business property" is construed in accordance with ***section 93***.

A reference in ***Chapter 2*** to a gift is to be construed as a reference to a taxable gift (see ***section 6***) and a reference to an inheritance is to be construed as a reference to a taxable inheritance (see ***section 11***). **(2)**

A company and all its subsidiaries and any associated company of that company or of any of its subsidiaries and any subsidiary of such an associated company are members of a group for the purpose of ***Chapter 2***. **(3)**

Any references to a donee or successor in ***Chapter 2*** includes a reference to the transferee referred to in ***section 32(2)*** – see note on that subsection. **(4)**

*91 Application (*Chapter 2*)*

This section ensures that ***Chapter 2*** has effect in relation to gifts and inheritances of relevant business property. Business relief does not apply to discretionary trust tax.

92 Business relief

Summary

This section provides that the taxable value of relevant business property is reduced by 90%.

Details

Where the whole or part of the taxable value (see note on ***section 28***) of any taxable gift or taxable inheritance is attributable to the value of any relevant business property, the whole or that part of the taxable value will be treated as being reduced by 90%, subject to the other provisions of ***Chapter 2***.

93 Relevant business property

Summary

This section deals with the type of property eligible for business relief. Generally speaking, the property must consist of a business, or an interest in a business, or shares or securities of a company. Shares or securities must, as a rule, be unquoted and the beneficiary must, except in the case of a family company, hold a minimum interest in the company after taking the gift or inheritance. Quoted shares or securities may be eligible for relief if they were unquoted when they were acquired by the disponer.

Investment businesses and businesses which consist of dealing in land or financial assets are excluded from the relief.

Details

In order to qualify for business relief, the property must be "relevant business property" which is defined as: **(1)**

- property consisting of a business or an interest in a business (the property in question must consist of a whole business or part of a whole business. For example, a transfer of a factory or any other individual asset used in a business will not qualify for relief if transferred to the beneficiary without the business);

- unquoted shares or securities of a company carrying on a business provided that the beneficiary, on the valuation date and after taking the gift or inheritance, either:

  owns more than 25% of the voting rights relating to all questions affecting the company as a whole,

  controls the company within the meaning of ***section 27***, or

  owns at least 10% or more of the aggregate nominal value of all the issued shares and securities of the company and has worked full-time in the company (or, in the case of a group, for any company or companies in the group) throughout the period of 5 years ending on the date of the gift or inheritance;

- land, buildings, plant or machinery owned by the disponer but used wholly or mainly for the purposes of a business carried on by a company of which the disponer has voting control or by a partnership of which the disponer was a partner. The land etc. and the partnership interest or shares or securities in the company must be taken as a gift or inheritance by the same beneficiary from the same disponer at the same time. In addition, the partnership interest or the shares or securities must qualify as relevant business property and the land etc. must have been used by the company or by the partnership throughout the minimum ownership period (see note on ***section 94***). It is often commercially desirable (as well as historically commonplace) for shareholders in private trading companies to personally own the land or buildings and other assets used in the business of their company rather than transferring those assets to the company. In order to accommodate this reality, CATCA 2003, s93 (1) (e) provides that relevant

business property includes any land or building, machinery or plant which immediately before the gift or inheritance was used wholly or mainly for the purposes of a business carried on by a company controlled by the disponer or by a partnership of which the disponer was then a partner. In many family run companies, each spouse or civil partner holds 50 per cent of the share capital and as a result neither has control of the company. As neither spouse or civil partner has control of the company in that situation Business relief was not available on the personally owned assets being transferred when the business was being transferred. Finance Act 2014 addresses this problem by providing that from 23 October 2014, in the case of spouses and civil partners, that the control requirement is satisfied where, taking their shareholdings together, they control the company.

- certain quoted shares in or securities of a company (in order to qualify for business relief, the shares must have been owned by the disponer immediately prior to the disposition and unquoted at 23 May 1994 or, if later, the date when the disponer acquired those shares).

Where a company has more than one class of share and the votes attaching to a particular class are limited to questions involving the winding-up of the company or to questions primarily affecting shares or securities of that class, those votes are to be ignored for the purpose of deciding the element of voting control. **(2)**

The business carried on must not consist wholly or mainly (i.e. in excess of 50%) of dealing in land, shares, securities or currencies or of making or holding investments. In deciding this question regard will be had to the following: **(3)**

- the ratios of asset value and profit attributable to trading and investment respectively;
- the ratio of turnover to investment income;
- whether the employees are engaged more on the trading side than on the investment side and vice versa;
- whether there are any particular reasons for low trading profits;
- the use to which the investments or the income from the investments are put; and
- how the company is described in the annual accounts.

Where the business of a company consists wholly or mainly (i.e. in excess of 50%) of being a holding company of one or more companies whose business would not be an excluded business under ***subsection (3)***, the business of the holding company is not considered to be an excluded business notwithstanding that subsection. In addition, ***subsection (3)*** does not apply where the value of shares or securities is wholly or mainly (i.e. in excess of 50%) attributable, directly or indirectly, to trading activities. The provisions of ***section 99*** are ignored for the purposes of determining the value of such shares or securities. **(4)**

Land, buildings, machinery or plant which qualifies under ***subsection (1)*** must be **(5)**

transferred at the same time as the partnership interest or the shares or securities of the company and that interest or those shares must also qualify for relief.

As respects land, buildings, machinery or plant, any reference to a disponer includes a reference to a life tenant under a settlement, and any powers of voting attached to shares or securities in the name of the trustees of a settlement are deemed to be owned by the life tenant. **(6), (7)**

94 Minimum period of ownership

Summary

This section provides that in order to qualify for business relief, relevant business property must have been owned by the disponer, or his/her spouse, for a minimum period prior to the gift or inheritance. In the case of an inheritance taken on the death of the disponer, that minimum period is 2 years. In the case of a gift made during the lifetime of the disponer, it is 5 years. Gifts and inheritances out of a trust will qualify for relief if the property was in the trust (or in the ownership of the disponer or his/her spouse/civil partner) for the previous 5 years.

Details

Property will not be relevant business property unless it was comprised in the disposition continuously:

- for a period of 2 years immediately prior to the date of the inheritance where an inheritance is taken on the date of death of the disponer, and
- for a period of 5 years immediately prior to the date of the gift or inheritance in any other case.

The disposition in question will generally be the will or intestacy of the disponer and if the disponer or his or her spouse has owned the property concerned for the 2 years prior to the date of death, it will be deemed to have been comprised in the disposition for that period and to qualify accordingly.

In the case of a straightforward gift during the disponer’s lifetime, the disposition will be the gift and that gift will qualify for relief if the property comprised in the gift was owned by the disponer or his/her spouse for 5 years prior to the gift.

Gifts or inheritances out of a settlement will qualify for relief if the property has been owned by the trustees of the settlement for 5 years prior to the gift or inheritance (or 2 years in the case of an inheritance taken on the death of the disponer). Again, periods of ownership of the disponer, or his/her spouse/civil partner, immediately prior to the settlement will count for the purposes of the 5 year or 2 year rule.

95 Replacements

Summary

This section provides that relevant business property that has replaced other relevant business property does not qualify for the relief unless the disponer, or his or her spouse, owned it and the replaced property taken together for at least 5 years out of the 6 years immediately preceding the gift or inheritance. In the case of an inheritance taken on the death of the disponer, the minimum period of ownership is 2 years out of the 3 years immediately preceding the inheritance.

Where the value of the replacement property is higher than that of the property replaced, the relief is restricted to what it would have been had the replacement not been made.

Details

Any property which has replaced other relevant business property will qualify for relief if it and the replaced property are comprised in the disposition: **(1)**

- in the case of an inheritance taken on the death of the disponer, for at least 2 years out of the 3 years immediately preceding the date of the inheritance, and
- in any other case, for at least 5 years out of the 6 years immediately preceding the gift or inheritance.

Where the value of the replacement property is higher than the value of the property replaced, the relief is restricted to what it would have been had the replacement not been made. **(2)**

Example

A drapery business had been sold for €100,000 and was replaced by a shop which was bought for €150,000. The shop was worth €180,000 on the relevant valuation date. The relief would be restricted as follows:

For the purposes of ***subsection (2)***, changes resulting from the formation, alteration or dissolution of a partnership, or from the acquisition of a business by a company controlled (within the meaning of ***section 27*** of the Act) by the former owner of the business, are disregarded. **(3)**

96 Succession

This section ensures that where a disponer became beneficially entitled to any property on the death of another person, that disponer is deemed to have been beneficially entitled to it from the date of the death of that person for the purposes of the 5 year and 2 year minimum ownership rule referred to in ***sections 94*** and ***95***.

97 Successive benefits

Summary

Where the disponer dies within 2 years of acquiring relevant business property, the 2-year rule cannot be complied with in relation to an inheritance of that property taken on that disponer's death. The rule is, however, relaxed where the earlier acquisition would have qualified for the relief. The effect of this section is that if A leaves relevant business property on his death to B, a subsequent transfer of the property on B's death can qualify for relief even if this occurs less than 2 years after A's death. Also, if C makes a lifetime transfer to D and D dies within the 2 years, the appropriate reduction can be made on D's death.

Details

Where relevant business property is acquired by gift or inheritance and the gift or inheritance qualifies for business relief (or would have qualified for business relief if the relief had been available at that time), then a subsequent inheritance of that property (or of any relevant business property which replaces that property) taken on the death of the earlier beneficiary qualifies for the relief even though not owned for 2 years. **(1)**

Example

A decided to retire from the family business on 1 March 2003. She gifted her 100 shares in X Ltd. (the entire share capital) to her brother, B. The shares qualified for business relief. B died on 1 April 2003 and left what were previously A's shares to his son, C. Business relief will apply notwithstanding the fact that B only owned A's shares for 1 month.

Where the value of any replacement property is higher than the value of the property replaced, the relief is restricted to what it would have been had the replacement not been made. **(2)**

The relief is restricted to the same fraction of any property comprised in the later gift or inheritance as was acquired on the earlier gift or inheritance. Thus, if the earlier benefit was partly a gift and partly a purchase, the relief will only extend to the part of the property which was a gift. If, in the previous example, A had gifted her 100 shares (valued at €100,000 on 1 March 2003) to B in consideration of B giving her €10,000, then the relief available to C in respect of the benefit taken on 1 April 2003, when the shares were valued at €110,000, will be restricted as follows: **(3)**

Market value of earlier benefit: €100,000

Taxable value of earlier benefit:

(€100,000 – €10,000) = € 90,000

Fraction of subsequent benefit which will qualify for relief:

$$\frac{€\,100{,}000 - €\,10{,}000}{€\,100{,}000} = \frac{9}{10}$$

Amount of subsequent benefit which will qualify for relief:

$$€110{,}000 \times \frac{9}{10} = €99{,}000.$$

98 Value of business

Summary

This section explains how a business, or a share in a business, is to be valued for the purposes of the relief.

Details

The value of a business or of an interest in a business is its net value. **(a)**

Subject to ***paragraph (c)***, the net value of the business is the market value of the assets used in the business (including goodwill) reduced by the aggregate market value of any liabilities incurred for the purposes of the business. **(b)**

In determining the net value of an interest in a business (e.g. a partnership), only the assets or liabilities of the business as a whole are taken into account, and not the assets or liabilities of individual partners even if they were used or incurred for the purposes of the business. **(c)**

99 Value of certain shares and securities

Summary

This section provides that the value of shares or securities of a holding company is reduced, for the purposes of the relief, where the company is a member of a group and one or more of the other companies in the group is not within the definition of relevant business property. In these circumstances, the shares or securities of the holding company are valued as if any non-qualifying companies were not members of the group. Similarly, where the shares or securities of any company in the group are quoted, the assets of that company will also be ignored unless those shares were unquoted at a time on or after 23 May 1994, when they were owned within the group.

Details

The assets of a non-qualifying subsidiary or associated company will be ignored for the purposes of calculating the relief applicable to shares or securities of a holding company unless the business of that non-qualifying company consists wholly or mainly (i.e. in excess of 50%) of holding land or buildings wholly or mainly occupied by qualifying members of the group. **(1)**

Where the shares or securities of any member of the group are quoted on a stock **(2)**

exchange on the valuation date, those assets are ignored for the purposes of calculating business relief unless they were unquoted on or after 23 May 1994, when they were in the beneficial ownership of the disponer or a member of that group.

100 Exclusion of value of excepted assets

Summary

This section provides that relevant business property must be valued for the purposes of the relief as if certain assets were ignored i.e. assets not used for the purposes of the business concerned for the required length of time and assets belonging to a new business acquired within the relevant minimum ownership period. Where different companies within the same group carry on separate businesses, each separate business may qualify as part of the business concerned for the purposes of calculating relief attributable to shares in the holding company concerned. The section also provides that land, buildings, machinery or plant in the separate ownership of the disponer but used for the purposes of the business of a company or partnership must have been so used for the relevant minimum ownership period.

Details

In determining the value of the relevant business property for the purposes of the relief, certain assets must be excluded. These are: **(1)**

- any excepted assets within the meaning of ***subsection (2)***, or
- any excluded property within the meaning of ***subsection (8)***.

"excepted assets" are any assets which were not used wholly or mainly for the purposes of the business concerned throughout the whole or the last 2 years of the relevant period. (The relevant period is defined in ***subsection (6)***). **(2)**

Where the business concerned is carried on by a company which is a member of a group, then any asset of any company within the group which is used for the purposes of the business of any company within the group is treated as use for the purpose of the business concerned, except in the case of a company whose membership of the group falls to be disregarded under ***section 99***.

The use of an asset for the purposes of a business to which ***section 93(3)*** relates (i.e. a business which consists wholly or mainly of dealing in currencies, securities, stocks or shares, land or buildings, or making or holding investments) is not treated as use for the purposes of the business concerned. **(3)**

The assets referred to in ***section 93(1)(e)*** (i.e. land or buildings, plant or machinery or plant owned by the disponer and used by a company controlled by him/her) should be excluded when determining the value of relevant business property unless certain conditions are met. **(4)**

The conditions are that the asset must be used wholly or mainly for the purposes of the business throughout the following periods:

- 2 years immediately preceding the date of the inheritance in cases where the disponer's interest in the business or in the shares in or securities of the company carrying on the business are taken on the death of the disponer; or

- 5 years immediately preceding the date of the gift or inheritance in all other cases.

Replacement assets will qualify provided the original asset and the replacement asset were used for periods which taken together comprised—

- in the case where the disponer's interest in the business or the shares in or securities of the company carrying on the business are comprised in an inheritance taken on the date of death of the disponer, at least 2 years falling within the 3 years immediately preceding the date of the inheritance, or

- at least 5 years falling within the 6 years immediately preceding the date of the gift or inheritance in all other cases.

However, if the provisions of ***section 97*** (waiving the 2 year minimum ownership rule where the beneficiary, or his/her spouse, of a gift or inheritance dies within 2 years of the gift or inheritance, provided that the first gift or inheritance would have met the conditions of the relief) apply, then the periods of use will be deemed to have been complied with if the asset or that asset and the replacement asset or assets was or were used wholly or mainly for the purposes of the business throughout—

- the period between the earlier benefit and the subsequent benefit referred to in ***section 97***, or

- the part of that period during which it or they were in the beneficial ownership of the disponer or the disponer's spouse/civil partner.

(5) Where only part of the land or building is used for the purposes of the business, the land or building will be treated as 2 separate assets. The part used exclusively for the business will be included in the determination of the value of the relevant business property. The remainder will be treated as an excepted asset.

(6) The term "relevant period", in relation to an asset for the purposes of this section, is defined as the period immediately preceding the gift or inheritance during which the asset or, if the relevant business property is an interest in a business, the corresponding interest in the asset, was comprised in the disposition. If the business concerned is carried on by a company, the relevant period is the period during which the asset was beneficially owned by that company or by any other company which immediately before the gift or inheritance was a member of the same group.

(7) An asset will be deemed not to have been used wholly or mainly for the purposes of the business at any time when it was used wholly or mainly for the personal benefit of the disponer or of a relative of the disponer.

That part of the value of shares in a company which is attributable to an entirely new business (i.e. not a replacement of an existing business) acquired during the minimum ownership period is excluded from the relief. **(8)**

The general replacement assets provisions for business relief will apply where one trading subsidiary in a group has been replaced by another qualifying company within the minimum ownership period laid down for the relief. **(9)**

101 Withdrawal of relief

Summary

This section provides for a clawback of business relief in the event that the business concerned is sold or leased or ceases to be a qualifying business within 6 years of the date of the gift or inheritance. In addition, the relief granted will be reduced where the property in respect of which relief was granted is replaced by other property whose value is less than the value of the original property. The reduction will be in the same proportion that the market value of the replacement property bears to the market value of the original property.

Details

"relevant period" means the period of 6 years after the date of the gift or inheritance. **(1)**

The relief granted in respect of relevant business property will be clawed back if and to the extent that— **(2)**

- the relevant business property, or any property which replaces it, either directly or indirectly, ceases to be relevant business property within the relevant period otherwise than by reason of bankruptcy or as a result of a bona fide winding-up on grounds of insolvency, or

- the relevant business property, or any property which replaces it, either directly or indirectly, is sold, redeemed or compulsorily acquired within the relevant period and is not replaced within a year of the sale, redemption or compulsory acquisition by other relevant business property.

The clawback provisions will not apply to any land, building, machinery or plant within the meaning of ***section 93(1)(e)*** for so long as they continue to be used for the purposes of the business concerned nor will it apply where the relevant event happens after the death of the donee or successor.

Where the original property has been replaced, directly or indirectly, by other property and the market value of the original property is greater than the market value of the property which replaced it, the relief is reduced in the same proportion that the market value of the replacement property bears to the market value of the original property. **(3)**

102 Avoidance of double relief

This section provides that where agricultural relief has been granted in respect of any property, business relief will not apply to that property.

CHAPTER 2A

Clawback of agricultural relief or business relief: development land

102A Agricultural and business property: development land

Summary

This section provides that, where agricultural relief or business relief has been granted in respect of the development value of development land, the relief granted will be clawed back if the land is disposed of in the period commencing 6 years after the date of the gift or inheritance and ending 10 years after that date.

Details

The expressions "agricultural property", "current use value", "development land", "development of a minor nature", "relevant business property" and "valuation date" are defined. **(1)**

"development land" means land in the State, the value of which at the date of the gift or inheritance exceeds the current use value of that land at that date and includes shares deriving their value in whole or in part from such land.

Example

A farm of 100 acres is zoned as "agricultural land". Its value as farmland is €2 million. Therefore, its current use value is €2 million. If, however, it is likely that the land could be zoned for development, and its value on that basis is €20 million, then it is development land for the purposes of the definition although it may not have been rezoned at the date of the gift or inheritance.

"current use value", in relation to land, is the amount which would be the value of the land on the date of the gift or inheritance if its value were calculated on the basis that it was, and would remain, unlawful to carry out any development other than development of a minor nature.

"development of a minor nature" means development which is exempted development under section 4 of the Planning and Development Act 2000, e.g. development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used.

The expressions "agricultural property", "relevant business property" and "valuation date" shall be construed in accordance with ***sections 89***, ***93*** and ***30*** respectively.

Where— **(2)**

- relief has been granted by virtue of ***section 89(2)*** or ***92*** in respect of a gift or inheritance of agricultural property or relevant business property, as the case may be,
- the property is comprised, in whole or in part of development land, and
- that land is disposed of 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 the land.

The expression "disposed of" has its ordinary meaning (i.e. a transfer of ownership in an asset) and includes a sale, a compulsory acquisition, a gift or a transfer of property occurring on the death of the donee or successor.

Example

A receives a gift of development land from his father on 1 June 2006. The land qualified for agricultural relief. The current use value of the land on the valuation date (i.e. 1 June 2006) is €2 million. The market value of the land on that date is €20 million because of its development potential. A sells the land in 2013. A clawback will apply in respect of the relief granted on the sum of €18 million (i.e. €20 million less €2 million), being the value attributable to its development potential.

In the case of inheritances, the valuation date will, in the majority of cases, be after the date of death of the disponer. The clawback will, therefore, be based on the market value of the land on that date.

CHAPTER 3

Miscellaneous reliefs

103 Relief from double aggregation

<u>Summary</u>

This section gives relief in respect of property which is settled on express trusts and provides that where the same property is chargeable to tax more than once on the same event it will not be included more than once in any aggregate for the purposes of computing tax.

Details

Property which is chargeable to tax more than once on the same event should be included only once in relation to any aggregate referred to in ***Schedule 2***, which deals with the computation of tax. **(1)**

The scheme of the Act is to tax an interest in possession and not to tax a future interest until such future interest becomes an interest in possession. Thus, if A settles in his lifetime property on B for life, with remainder to C absolutely:

- B, on the execution of the settlement, takes a gift of a life interest in the property from A, and
- C, on B's death, takes an inheritance of an absolute interest in the property from A.

Section 33 deals with the situation where, in this example, B releases his life interest to C. The effect of ***section 33(2)*** is that B is treated as dying immediately before the release. As a consequence, tax becomes payable in respect of the property taken by C from A. In addition, C takes a gift from B on the release of B's life interest in the property which is subject to a charge for tax. This charge is preserved by ***section 33(3)***. Thus, on the same event, i.e. the release of the life interest by B, 2 claims for tax arise as follows:

- on the absolute interest in the property taken by C from A, and
- on a life interest in the property taken by C from B.

To remedy the situation, in assessing tax on the earlier claim (i.e. on the property taken by C from A) the property in the later claim (i.e. on the property taken by C from B) will not be aggregated.

The claim for tax on the market value of the property taken by C from A in the example above takes precedence since ***section 33(2)*** deems that the death of A happens before the release. Accordingly, the provisions of ***paragraph 5*** of ***Part 1*** of ***Schedule 2***, which deal with benefits taken on the same day, do not apply. **(2)**

104 Allowance for capital gains tax on the same event

Summary

This section provides that where both capital gains tax and capital acquisitions 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 acquisitions tax. The credit given will be clawed back to the extent that the asset is disposed of within 2 years after the date of the gift or inheritance.

Details

Where either gift tax or inheritance tax and capital gains tax are charged on the **(1)**

happening of the same event in connection with the same property, the capital gains tax will not be allowed as a deduction in ascertaining the taxable value of the taxable gift or the taxable inheritance, but, provided it has been paid, will be allowed as a credit against the gift tax or inheritance tax. In relation to each asset, or part of each asset, disposed of, the amount deducted is the lesser of—

- an amount equal to the amount of the capital gains tax attributable to such asset, or to part of such asset, or
- an amount equal to the amount of gift tax or inheritance tax attributable to the property which is that asset, or that part of that asset.

Example

Where the same event gives rise to a claim for gift tax on company shares and cash, the company shares only are liable to capital gains tax. The tax position is, therefore, as follows:

	Company shares	Cash	Total
CAT	€1,000	€800	€1,800
CGT	€1,500	—	€1,500

Only one asset (i.e. the company shares) is doubly taxed and the credit to be given against €1,000 is €1,000 (i.e. the lesser of the two taxes on the same property), leaving the net capital acquisitions tax on that asset at nil. The total capital acquisitions tax payable on the company shares and on the cash is €1,800. There would be no justification for giving a credit of €1,500 against €1,800, since the cash is not doubly taxed on the same event.

(2) In order to ascertain the capital gains tax attributable to the asset in question, it may be necessary to apportion certain items such as allowable losses or annual exemptions on a just and reasonable basis. Taxpayers have a right of appeal against any such apportionment made by the Revenue Commissioners.

(3) The credit granted under ***subsection (1)*** will cease to apply to the extent that the asset is disposed of within 2 years after the date of the gift or inheritance.

105 Allowance for prior tax on the same event

Summary

This section provides that where tax is charged more than once on the same property on the same event, the net tax which is earlier in priority will be deducted against the tax which is later in priority. This ensures that the same property is charged to tax only once.

Details

The scheme of the Act is to tax interests in possession and not to tax a future interest until such future interest becomes an interest in possession. Thus, if A settles property by will on B for life with remainder to C absolutely, 2 successive claims for inheritance tax arise—

- on A's death, in respect of a life interest in the property taken by B from A, and
- on B's death, in respect of an absolute interest in the property taken by C from A.

Section 32 deals with the situation where C, in this example, makes a gift of his remainder interest in the property to D. D takes a benefit from C which is not immediately taxable since it is not an interest in possession.

However, when B dies—

- under ***section 32(2)***, C takes an inheritance of the property from A (but D as "transferee" is liable for payment of the tax), and
- D takes an inheritance ("on a death") of the same property from C.

Thus, 2 claims for tax arise in respect of the same property on the same event, i.e. B's death, for which D is liable. (The inheritance taken by D from C is preserved by ***section 32(3)***).

Section 105 ensures that where gift tax or inheritance tax is chargeable more than once in respect of the same property on the same event, the net tax payable which is earlier in priority will be allowed as a credit in ascertaining the tax which is later in priority.

Example

Assume that the tax payable on the inheritance taken by C from A in the second example above is €80,000 and that the tax payable in respect of the benefit taken by D from C is €100,000. The tax which is earlier in priority i.e. €80,000 is allowed as a credit against the tax which is later in priority i.e. €100,000. The net tax payable will, therefore, be €20,000. The total tax payable in respect of both inheritances will, of course, be €100,000 i.e. €80,000 + €20,000.

106 Arrangements for relief from double taxation

Summary

This section enables the Government by order to make arrangements for double taxation relief in respect of gift tax or inheritance tax and for the exchange of information for the prevention and detection of evasion of those taxes, or taxes of a similar character, imposed in another country. The draft of the order must be laid before Dáil Éireann and approved by it and legislation must be enacted by the Oireachtas which gives effect to

that Order.

Details

If the Government by order declares that arrangements have been made with the government of another territory to grant relief from double taxation in respect of gift or inheritance tax payable in this country and a tax of a similar nature imposed in that territory, such arrangements will have the force of law. In addition, legislation must be passed by the Oireachtas which inserts a reference to the Order in the Table to this section. **(1)**

The force of law will also be given to any arrangements entered into by the Government to exchange information with another country for the prevention and detection of evasion of gift tax or inheritance tax, or taxes of a similar character, imposed in that other country.

This subsection provides that— **(2)**

- arrangements made under ***subsection (1)*** may be retrospective, and
- provisions may be made as to property which is not itself subject to double tax (this relates to the making of rules relating to where property is deemed to be located which might or might not follow the general law. These rules might provide that, for the purposes of the tax, the liability of certain property would be determined in accordance with rules agreed between states).

At present, only one treaty has been concluded under section 66 of the Capital Acquisitions Tax Act 1976 i.e. the Double Taxation Relief (Taxes on Estates of Deceased Persons on Inheritances and on Gifts) (United Kingdom) Order 1978 (S.I. No. 279 of 1978).

A double tax treaty was concluded between this country and the United States of America on 20 December 1951. The treaty applied to federal estate tax in the USA and to Irish estate duty and to any other taxes of a substantially similar character imposed subsequently by either Ireland or the USA. By agreement between both countries, the treaty applies to inheritance tax and federal estate tax arising on death, but it does not apply to tax on gifts. Neither does it apply to any death taxes imposed by individual U.S. states, although relief for these taxes might be available unilaterally under ***section 107***.

An agreement made with the head of a foreign state will be regarded as made with the government of that state. **(3)**

Information can be exchanged between this country and another country under arrangements which have the force of law under this section. **(4)**

Any order made under the section may be revoked by a subsequent order, and any such revoking order will contain such transitional provisions as appear to the Government to be necessary. **(5)(a)**

Any order under the section will not be made until a draft of that order is laid before Dáil Éireann and a resolution approving of the draft has been passed by the Dáil. **(5)(b)**

Part 1 of the Table refers to arrangements made by the Government with the government of any territory outside the State providing for relief from double taxation and exchanging information relating to tax. Reference is included in this Part to S.I. No. 279 of 1978, i.e. the Irish/UK double taxation agreement relating to CAT. Part 2 refers to arrangements regarding the exchange of information relating to tax and other matters relating to tax.

107 Other relief from double taxation

Summary

This section grants unilateral relief in the case of gifts and inheritances of foreign-situated property which are subject to tax in two or more jurisdictions (including the State) and which are not covered by an arrangement under ***section 106***. The tax in each jurisdiction must be broadly similar for the relief to apply. The credit will apply irrespective of where the property is situated.

Details

“foreign tax” means any tax which is chargeable under the laws of any territory outside the State and is of a character similar to estate duty, gift tax or inheritance tax; **(1)(a)**

“event” means—

- a death, or
- any other event,

by reference to which the date of the gift or the date of the inheritance is determined.

In identifying property as “foreign”, its situs (i.e. its location) is frozen at the date of the gift or the date of the inheritance. If, under a will, a testator leaves the residue of his/her estate, including French securities, to A and B equally, it might be some time before the residue can be retained for them and investments may have been sold, or there may have been a change of investments since the death. Thus, the legatees may receive cash but will be treated, for double taxation purposes, as receiving the French assets if they receive the proceeds of such assets or assets representing the same. **(1)(b)**

Where the Revenue Commissioners are satisfied that a benefit is reduced in value because a payment of foreign tax has been made in respect of that benefit, they will allow relief by way of a credit against the Irish tax chargeable on that benefit. The credit will apply irrespective of where the property is situated. In order to qualify for the relief, the foreign tax must have been paid on the same event that gave rise to the charge to Irish tax on the benefit. The credit is not to exceed the lesser of— **(2)**

- the actual capital acquisitions tax payable on that event in respect of the foreign property in question (the capital acquisitions tax may be paid either by the person getting the relief or by some other person), or

- the foreign tax.

The reference to the same disposition is necessary to confine the allowance to a reduction of Irish tax only where, under the same disposition, foreign tax is payable.

This section does not apply where a credit is already allowed under a double taxation agreement between the states concerned. **(3)**

This subsection deals with the situation where, for example, a residuary legatee's taxable inheritance is reduced (within the meaning of ***subsection (2)***) by the payment of foreign tax. An example of this situation would arise where a specific legatee, who bears foreign tax, is reimbursed out of the residue under a direction in a will. The specific legatee is deemed to get a pecuniary legacy of the amount of the tax attributable to that legacy. For inheritance tax purposes, he/she will be treated as getting 2 legacies, i.e. the full amount of the legacy and a pecuniary legacy of the amount of the tax. The subsection ensures that the residuary legatee will not qualify for double taxation relief in respect of the pecuniary legacy of the tax even though he/she "bears" the foreign tax indirectly. In law, what the residuary legatee loses is not the tax but the amount of the pecuniary legacy of the amount of the tax. **(4)**

PART 11 MISCELLANEOUS

Overview

This Part contains miscellaneous provisions relating to capital acquisitions tax.

108 Certificates for probate

[This section has been deleted by section 147 of the Finance Act 2010.]

109 Payment of money standing in names of 2 or more persons

Summary

This section provides that where a sum of money exceeding €50,000 is lodged or deposited with a banker (as defined) in the joint names of 2 or more persons, the banker cannot, on the death of one of those persons, pay that money or any part of it to the survivor or survivors without first obtaining from the Revenue Commissioners either a certificate confirming that there is no outstanding charge to tax, or a consent in writing to the effect that the money can be paid to the survivor or survivors.

Details

"banker", "pay" and "current account" are self-explanatory. **(1)**

Where the amount lodged or deposited (otherwise than on a current account) in a bank or building society, etc. is in excess of €50,000, the banker must not pay that money or any part of that money, on the death of a joint account holder, to the survivor or survivors without a certificate from the Revenue Commissioners certifying that there is no outstanding claim for inheritance tax on the money or any part of that money, or a consent in writing from the Revenue Commissioners allowing the payment of the money pending the ascertainment and discharge of tax. **(2)**

Tax is deemed to become due and payable on the date of the relevant death notwithstanding anything contained in the Act. This provision is necessary for any case where there may be a time lapse between the date of death and the valuation date. **(3)**

Any banker contravening the provisions of the section will be subject to a penalty of €4,000. **(4)**

In any case where a penalty is demanded, the onus of proof that a certificate or consent was issued under ***subsection (2)*** will lie with the banker. **(5)**

Relief is provided for a banker, acting in good faith, on the belief that none of the joint account holders was dead. Proof of the banker's good faith will be a good defence in an action for recovery of the penalty. **(6)**

The section does not apply where the sum of money referred to in ***subsection (2)*** is lodged or deposited in the joint names of 2 persons, one of whom dies on or after the date of the passing of the Act (i.e. on or after 21 February 2003) and is at the time of that person's death the spouse/civil partner of the deceased person. **(7)**

110 Court to provide for payment of tax

Where an action is instituted in any Court for the administration of any property chargeable with tax, which is under the control of the Court, provision is to be made by the Court for due payment of the tax.

Although the Court is required to provide for the tax, the accountable person will be bound to see that proper returns are delivered and that the tax is paid, including making provision for the payment of the tax in any order of the Court. If, for any reason, the Court omits to provide for the tax, the accountable person will still be liable to account for the payment of tax to the Revenue Commissioners.

111 Liability to tax in respect of certain sales and mortgages

<u>Summary</u>

This section provides that where an interest in expectancy had been purchased or mortgaged before 1 April 1975, the liability of such purchasers or mortgagees will be limited to what it would have been if the property, on coming into possession, had been chargeable to death duties under the law in force and at the rates applicable at the date the property was purchased or mortgaged.

<u>Details</u>

"death duties" means estate duty/legacy duty and succession duty. The provisions of the section are extended to persons deriving title from a purchaser or mortgagee (e.g. A has bought B's future interest and dies, leaving that interest to C by will). **(1)**

Where an interest in expectancy has been sold or mortgaged prior to 1 April 1975, the liability of the purchaser or mortgagee is limited to the amount for which he/she would have been liable if death duties had remained in force under the law in force and at the rates applicable on the date of the sale or mortgage. The liability so limited is the liability to inheritance tax arising on the life tenant's death under the settlement in respect of the inheritance taken by the remainderman who has sold or mortgaged his/her reversionary interest i.e. when the interest of the remainderman referred to in ***section 32*** comes into possession. **(2)(a) - (c)**

The charge for any part of the inheritance tax which is greater than the amount referred to in ***paragraph (2)(b)*** (i.e. the amount for which the purchaser or mortgagee would have been liable if death duties had remained in force) is made a charge subsequent to the mortgage, despite the provisions of ***section 60(1)*** which provides that the tax due in respect of a gift or inheritance shall have priority over all charges and interests created by the donee or successor or any person claiming in right of the successor or on that donee or successor's behalf. **(2)(d)**

In relation to the excess of the tax over the limited amount of the liability of the purchaser or mortgagee under the section, any other person (such as the trustee of a settlement) is protected from any liability greater than the remaining trust funds in his/her hands which are held on the same trusts (e.g. where 2 houses are settled on A for life with remainder to B and B sells his/her remainder interest in one of them, the excess tax on that house can be met by selling or charging the other house). **(2)(e)**

In the case of a mortgagor, his/her liability, or that of a trustee, will not exceed the value of his/her equity of redemption (i.e. the value of the property less the amount required to pay off the mortgage).

The relief given in the section to a purchaser or mortgagee is confirmed by not allowing a right to any other accountable person to be reimbursed by the purchaser or mortgagee for any tax which the accountable person is relieved, or to have a charge on the property taken by the purchaser or mortgagee. **(2)(f)**

112 References in deeds and wills, etc. to death duties

Summary

This section provides how references to:

- legacy and succession duty,
- estate duty, or
- death duties, in general,

contained in documents are to be interpreted.

Details

Where a provision in a document refers to death duties or any death duty to arise on the death of a person occurring on or after the date of the passing of this Act, the following rules apply:

- if the document was executed prior to 31 March 1976, and the reference is to legacy duty and succession duty, it will be read as including inheritance tax (e.g. a pecuniary or specific bequest, free of legacy duty, will mean that the inheritance tax on that bequest will be payable out of the residuary estate); (a)
- if the document was executed prior to 31 March 1976 and the provision refers to estate duty, it will be read as including inheritance tax if such inclusion appears just (e.g. a bequest, free of estate duty, would not be read as including inheritance tax, as the estate duty would be payable out of the residuary estate). On the other hand, a devise of real estate made free of estate duty will be read as including inheritance tax as the devise would have to bear its own estate duty; (b)
- irrespective of when the document was executed, if the provision refers to “death duties”, it will be read as including inheritance tax (e.g. a bequest given “free of (c)

all death duties").

113 Tax, in relation to certain legislation

Summary

This section provides that inheritances will be treated as a death duty for the purposes of certain provisions of the Succession Act 1965 and that capital acquisitions tax charged on registered land need not be registered in order to take effect.

Details

Section 34(3) of the Succession Act 1965 deals with the administration bond, which is a promise given to the President of the High Court by a third party (often an insurance company) that if the administrator of a deceased person's estate defaults in the administration, the third party will make good the amount defaulted. **(1)**

The purpose of ***paragraph (a)*** is to bring inheritance tax within the cover of an administration bond by providing that the bond must make provision for the payment of the tax. The administration bond applies to any case of a grant of administration, including administration with will annexed. **(1)(a)**

The definition of a pecuniary legacy in section 3(1) of the Succession Act 1965 includes any other general direction by a testator for the payment of money, including all death duties free from which any devise, bequest or payment is to take effect. The purpose of ***paragraph (b)*** is to extend this to inheritance tax. This means that a direction in a will to pay a successor's inheritance tax out of some fund other than that taken by the successor is itself a pecuniary legacy, and the benefit to the successor will be taxed accordingly. **(1)(b)**

Paragraph 8 of Part II of the First Schedule to the Succession Act 1965 provides that the order of application of assets of a solvent estate does not affect the liability of land to answer the death duties imposed on such land. ***Paragraph (c)*** extends this rule to inheritance tax. **(1)(c)**

Section 72 of the Registration of Title Act 1964 lists certain burdens in relation to registered land which do not need to be registered in order to take effect. ***Subsection (2)*** brings inheritance tax and gift tax within the ambit of that section. **(2)**

114 Delivery, service and evidence of notices and forms, etc.

Summary

This section provides procedures which may be adopted for the service of notices and forms (e.g. under ***section 46***) and for evidence of service of notice in any proceedings (e.g. proceedings taken for the recovery of tax and penalties under ***section 63***).

Details

Any notice under the Act may be served by post. **(1)**

A notice or form which is required to be served on a person may be delivered to him/her **(2)**

or may be left at his/her usual or last known address.

Evidence of any notice given by the Revenue Commissioners in any court proceedings taken under the Act may be given by way of a document which purports to reproduce details of the notice, if those details are held on a Revenue computer record. **(3)**

The Revenue Commissioners may, at their discretion, extend any time-limit specified by the Act for doing any act required to be done under the Act by any person other than themselves (other than under ***Part 8***, which deals with appeals and which may be extended under that Part in certain circumstances). **(4)**

115 Extension of certain Acts

This section enables a change in the rate of tax to be made by Financial Resolution of Dáil Éireann and places on the Revenue Commissioners the same responsibilities to account for the tax as are already imposed on them in relation to other duties.

116 Regulations

Summary

This section empowers the Revenue Commissioners to make regulations which may be necessary for giving effect to the Act. Every such regulation must be laid before Dáil Éireann.

Details

This provision enables the Revenue Commissioners to make such regulations as are necessary for giving effect to the Act and for enabling them to discharge their functions under the Act. **(1)**

Every regulation must be laid before Dáil Éireann as soon as possible after it has been made. It may be annulled by a resolution of Dáil Éireann passed within 21 sitting days of the Dáil after the regulation is placed before it. However, this will not affect the validity of anything done under that regulation. **(2)**

117 Care and management

Summary

This section places the tax under the care and management of the Revenue Commissioners.

Details

The tax is placed under the care and management of the Revenue Commissioners. This is the usual provision in all tax legislation. **(1)**

This provision is necessary to enable the Revenue Commissioners to delegate functions to their officers for which, of course, they remain responsible. **(2)**

PART 12 REPEALS, ETC.

Overview

This Part contains provisions relating to the commencement of this Act, repeals and transitional arrangements.

118 Repeals

This section provides for the repeal of the Capital Acquisitions Tax Act 1976 following the enactment of this Act. Under ***section 2(7)***, the Capital Acquisitions Tax Act 1976 is deemed to include that Act, as amended or extended by any subsequent enactment. **(1)**

In accordance with section 16(2) of the Interpretation Act 2005, this Act will come into force on the date of its passing. However, the provisions of this Act will not apply to gifts or inheritances taken before the date of passing of this Act. Gifts and inheritances taken before 21 February 2003 (i.e. the date the Consolidation Act became law) will be dealt with under the pre-consolidation legislation. **(2)**

Those provisions of the repealed enactments which impose a fine, forfeiture, penalty or punishment in respect of an offence are to continue in force in so far as they are concerned with an offence which was committed or began before the date of passing of the Act. **(3)**

Anything done under the provisions of the repealed enactments corresponding with the provisions of this Act are deemed to have been done under the provisions of the Act to which the provisions of the repealed enactments correspond. **(4)**

119 Consequential amendments to other enactments

This section contains amendments to other enactments consequential on the passing of this Act.

120 Transitional provisions

The Revenue Commissioners will have all the jurisdictions, powers and duties in relation to capital acquisitions tax under the Act which they had before the passing of the Act. In addition, the section provides for the continuity of the law relating to capital acquisitions tax and things done under that law.

SCHEDULES 1, 2 AND 3

Overview

There are 3 Schedules to the Act.

Schedule 1 deals with the valuation of limited interests i.e. life interests and interests for a period of certain duration.

Schedule 2 contains provisions dealing with the computation of tax.

Schedule 3 contains amendments to other enactments consequential on the passing of this Act.

SCHEDULE 1: Valuation of limited interests

Summary

Schedule 1 is divided into 3 Parts. ***Part 1*** lays down the rules for ascertaining the value of limited interests according to age and gender in the case of life interests, and according to the period of time in the case of an interest for a period of certain duration.

Parts 2 and ***3*** contain the 2 tables required for valuing those limited interests.

Details

Section 28(4) provides that where the gift or inheritance is a limited interest, the value of that limited interest in a capital sum equal to the encumbrance-free value (i.e. the value of the capital of the property, less debts) will be ascertained in accordance with the Rules contained in ***Schedule 1***. The Rules are as follows:

rule 1

This rule provides that the value of an interest for a single life in a capital sum will be that sum multiplied by the factor, contained in ***column (3)*** or ***(4)*** of ***Table A***, which is appropriate to the age and gender of the person in respect of the duration of whose life the interest is to be valued.

Table A (in ***Part 2*** of the Schedule) is based on actuarial statistics.

rule 2

This rule provides a simplified method for valuing an interest for the joint continuance of 2 lives, employing the joint factor given in ***Table A*** in ***Part 2***.

rule 3

This rule is an extension of the method in ***rule 2*** to the case of 3 or more lives.

rules 4 & 5

Rules 4 and ***5*** provide a method for valuing an interest for the longest of 2 or more lives.

rule 6

This rule provides a method for valuing an interest for a period of certain duration. ***Table B*** in ***Part 3*** of the Schedule is used. ***Paragraph (b)*** of ***rule 6*** deals with valuing an interest for part of a year.

This rule provides a simplified method of valuing an interest which is to endure for a life or lives, but is guaranteed for a period of certain duration. **rule 7**

This rule deals with the case of a limited interest which is given in such terms that the other rules cannot be applied. It provides that each payment on account of the interest is treated as a separate gift or inheritance. **rule 8**

Part 2 contains ***Table A*** which sets out how the value of a life interest in a capital sum is valued for capital acquisitions tax purposes. The value of a life interest for the joint continuance of 2 lives is also provided for in the Table.

Part 3 contains ***Table B*** which sets out how an interest for a definite period is valued for capital acquisitions tax purposes.

SCHEDULE 2: Computation of tax

Summary

Schedule 2 contains provisions relating to the computation of capital acquisitions tax. The Schedule provides for 3 group thresholds i.e. €280,000 (Group A), €30,150 (Group B) and €15,075 (Group C). The group threshold applying in a particular case depends on the relationship of the donee or successor to the disponer.

The Group A threshold applies where—

- the donee or successor is, on the date of the relevant gift or inheritance the child, or minor child of a deceased child of the disponer/civil partner of the disponer, or
- the inheritance is taken by a parent of the disponer on the death of the disponer, and the interest taken is not a limited interest.

The Group B threshold applies where the donee or successor is, on the date of the relevant gift or inheritance, a lineal ancestor, a lineal descendant (other than a child, or a minor child of a deceased child), a brother, a sister, or a child of a brother or of a sister of the disponer or a child of the civil partner of a brother or of a sister of the disponer.

The Group C threshold applies where the donee or successor (who is not a spouse/civil partner of the disponer) is not, on the date of the relevant gift or inheritance, entitled to the Group A or Group B thresholds.

Benefits taken by a beneficiary since 5 December 1991, which have the same group threshold as the current benefit, are aggregated for the purpose of calculating the capital acquisitions tax payable on that benefit.

A single 33% rate of tax applies for both gifts and inheritances.

Special provisions are made treating—

- a beneficiary who is the surviving spouse of a deceased person who was nearer in relationship to the disponer than the beneficiary,
- certain nephews and nieces,
- certain foster children, and
- certain adopted children,

as being more closely related to the disponer than their normal relationship to that disponer, in certain circumstances.

Details

This paragraph provides for the 3 group thresholds.. **para 1**

This paragraph defines the term "value" as used in ***Part 1*** of ***Schedule 2*** by reference to the aggregation rules contained in ***paragraph 3***. **para 2**

This paragraph sets out how tax is to be calculated on a taxable gift or inheritance. The taxable value of taxable gifts and inheritances taken since 5 December 1991, which have the same group threshold as the current benefit, must be aggregated to calculate the capital acquisitions tax payable on that current benefit. **para 3**

For example, a beneficiary taking a current gift or inheritance from a parent will only be required to take into account previous gifts or inheritances taken from a parent since 5 December 1991, for the purposes of calculating the tax, if any, payable on the current benefit.

This paragraph provides for the application of the 33% rate of tax to the portion of the taxable value of a gift or inheritance in excess of the relevant threshold amount. **para 4**

Deleted by section 115(5) Finance Act 2012. **Para 5**

This paragraph provides that where, at the date of the gift or inheritance, a beneficiary is the surviving spouse/civil partner of a person who, at the date of his/her death, was nearer in relationship to the disponer than the beneficiary, the latter takes the deceased spouse's/civil partner's relationship for the purpose of determining the appropriate group threshold. **para 6**

Example

A, by will, gives all his property to his son's wife B (A's son had pre-deceased him). Under this paragraph, B is entitled to the Group A threshold.

This paragraph deals with favourite nephew/niece relief. **para 7**

"company", "control", "investment income", "nominee", "private company", "private company controlled by the disponer" and "private non-trading company" have the same meanings as they have in ***section 27***; **para 7(1)**

"relevant period" means—

- the period of 5 years ending on the date of the disposition. The date of the disposition is defined in ***section 2*** and means, broadly, the date on which the disponer disposes of his/her property, whether in his/her lifetime or on his/her death. Thus, the date of the disposition in the case of a lifetime gift is the date of the transfer of property. In the case of a bequest of property by will, it is the date of the testator's death. For example, if a nephew has worked 5 years for his/her uncle immediately prior to his death, the nephew will be entitled to the relief in respect of business assets which he takes immediately on his uncle's death, or which he takes on the termination of a life interest in those assets given by his uncle to, say, the uncle's widow, for her life;

- the period of 5 years preceding the ending of the disponer's interest, in the case of a settlement of property made by the disponer on himself/herself for a limited period (usually for his/her life). For example, if an uncle in his lifetime settles business assets on trust for himself for life, with remainder to his nephew absolutely, the nephew need only have worked 5 years for his uncle prior to his uncle's death.

Reasonable periods of annual or sick leave are included in calculating the 5-year period.

para 7(2) For the purpose of computing tax on a gift or inheritance, a child of a brother or a sister or a child of the civil partner of that brother or sister of a disponer is deemed to be the child of that disponer—

- where that child has worked substantially on a full-time basis for the disponer for the relevant 5 year period in carrying on, or in assisting in carrying on, the trade, business or profession of the disponer, and the gift or inheritance consists of property which was used in connection with that business, trade or profession,

- where that child has worked substantially on a full-time basis for a company (as defined) for the relevant 5-year period in carrying on, or in assisting in carrying on, the trade, business or profession of the company, and the gift or inheritance consists of shares in that company.

para 7(3) Where the trade, business or profession is owned directly by a disponer, the nephew or niece must have worked either—

- a minimum of 24 hours a week for the disponer, at the place where that trade, business or profession is carried on, or

- a minimum of 15 hours a week for the disponer, at the disponer's place of business, where the trade, business or profession of the disponer is carried on exclusively by the disponer, his/her spouse and the nephew or niece concerned.

Alternatively, where the trade, business or profession is owned by a company (as defined), the nephew or niece must have worked either—

- a minimum of 24 hours a week for the company, at the company's place of business, or
- a minimum of 15 hours a week for the company, at the company's place of business, where the business of the company is carried on exclusively by the disponer, his/her spouse and the nephew or niece concerned.

The lower minimum period of 15 hours work, compared with 24 hours, is intended to cover cases where the trade, business or profession involved might not be substantial (for example, a small farm) not requiring extensive work. Nevertheless, some minimum input of work by the nephew or niece into the trade, business or profession is required so that the relief may be given, and this is defined as 15 hours.

Relief is not given to any nephew or niece of the disponer who takes a gift or inheritance of the assets of a trade, business or profession under an appointment made by the trustees of a discretionary trust set up by the disponer. **para 7(4)**

This paragraph deals with certain marriage settlements created before 1 April 1975. It provides that where, on the cesser of a limited interest to which a parent of the donee or successor was entitled in possession, the donee or successor takes a gift or an inheritance under a "specified disposition", then, for the purpose of computing the tax payable on the gift or inheritance, the donee or successor is deemed to bear to the disponer the relationship of a child. **para 8**

"specified disposition" is defined as a disposition—

- the date of which is a date prior to 1 April 1975,
- in relation to which the disponer is a grandparent of the donee or successor, and
- in which the marriage of the parents of the donee or successor was, at the date of the disposition, expressed to be the consideration.

This paragraph provides that where a foster child receives a gift or inheritance from his/her foster parent, that foster child is entitled to the Group A threshold in respect of the gift or inheritance taken from his/her foster parent. **para 9**

"the appropriate period" is defined as periods falling between the birth of the child in question and his/her 18th birthday which together amount to 5 years.

This relief applies to a gift or inheritance by a foster child from a foster parent where the Revenue Commissioners are satisfied that the foster child resided with the foster parent and was cared for and maintained by the foster parent throughout the appropriate period. It also applies to an inheritance which is taken on the death of the disponer where the Revenue Commissioners are satisfied that the successor had, prior to the date of the inheritance, been placed in the foster care of the disponer under the Child Care (Placement of Children in Foster Care) Regulations 1995, or the Child Care (Placement of Children with Relatives) Regulations 1995. In each situation, the foster child is given the group threshold appropriate to a child.

The relief will not apply where the claim is based on the unsupported evidence of one witness.

para 10

This paragraph provides that where an adopted child receives a gift or inheritance from a natural parent, that adopted child is entitled to the Group A threshold in respect of the gift or inheritance taken from his/her natural parent.

para 11

For the purposes of ***Schedule 2***, a reference to a gift or an inheritance, or to a taxable gift or a taxable inheritance, includes a reference to a part of a gift or an inheritance, or to a part of a taxable gift or a taxable inheritance, as the case may be.

SCHEDULE 3: Consequential amendments

This Schedule substitutes references to the Capital Acquisitions Tax Consolidation Act 2003 for references to the Capital Acquisitions Tax Act 1976, or to sections dealing with capital acquisitions tax in various Finance Acts, which appear in legislation other than tax legislation (see, for example, section 2(4) of the Ethics in Public Office Act 1995).

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