

NOTES FOR GUIDANCE

CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

(as amended by subsequent Acts up to and including the
Finance (No.2) Act 2023)

Part 11: Miscellaneous



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 (No. 1 of 2003) as amended by subsequent Acts up to and including the Finance (No.2) Act 2023.

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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. (2) 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.

Tax is deemed to become due and payable on the date of the relevant death notwithstanding anything (3) 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.

Any banker contravening the provisions of the section will be subject to a penalty of (4) €4,000.

In any case where a penalty is demanded, the onus of proof that a certificate or consent was issued under (5) *subsection (2)* will lie with the banker.

Relief is provided for a banker, acting in good faith, on the belief that none of the joint account holders was (6) dead. Proof of the banker’s good faith will be a good defence in an action for recovery of the penalty.

The section does not apply where the sum of money referred to in *subsection (2)* is lodged or deposited (7) 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 other person.

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

Summary

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.

Details

“death duties” means estate duty/legacy duty and succession duty. The provisions of the section are extended to (1) 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).

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: **(a),(b), (c)**

- 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);
- 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;
- 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 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.

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 (1)(c) 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.

Section 72 of the Registration of Title Act 1964 lists certain burdens in relation to registered land (2) 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.

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 or may be left at his/her usual or last known address. (2)

Evidence of any notice given by the Revenue Commissioners in any court proceedings taken under the Act (3) 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.

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 (1) to the Act and for enabling them to discharge their functions under the Act.

Every regulation must be laid before Dáil Éireann as soon as possible after it has been made. It may be (2) 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.

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 (1) all tax legislation. This provision is necessary to enable the Revenue Commissioners to delegate functions to their officers for which, of course, they remain responsible.