# CAT

## CAPITAL ACQUISITIONS TAX

Charge to tax

### Disponer and disposition

Capital Acquisitions Tax (CAT) applies to gratuitous benefits, for example, a gift (s 4) or an inheritance (s 9).

The person who provides the property is the **disponer**, and the **disposition** is the method by which the property passes. Where property passes by will, the disponer is the testator. Where property passes on intestacy (no will), the disponer is the deceased.

The term disposition is very widely defined to include not only a will or intestacy, but any method (including, for example, any trust covenant, agreement or arrangement) by which property can pass.

The **date of the disposition** is the date of death of the disponer in the case of property passing by will or intestacy, and in other cases it is the date on which the disponer provided the property (or bound himself to provide it).

### Taxable benefits

To be chargeable, a gift (s 6) or inheritance (s 11) must be taxable.

A gift is taxable if:

(a) the disponer was Republic of Ireland (ROI) resident or ordinarily resident at the date of the disposition, or at the date of the gift, or

(b) the donee was Republic of Ireland (ROI) resident or ordinarily resident at the date of the gift.

Otherwise, only the part or proportion of the property situate in the ROI at the date of the gift is taxable.

An inheritance is taxable if:

(a) the disponer was ROI resident or ordinarily resident at the date of the disposition, i.e., the date of death, or

(b) the successor was ROI resident or ordinarily resident at the date of the inheritance.

Otherwise, only the part or proportion of the property situate in the ROI at the date of the gift is taxable.

A non-Irish domiciled person can only be regarded as ROI resident or ordinarily resident for CAT purposes if he has been continuously ROI resident for the five year period ending on the date of the gift or inheritance.

### Taxable value

A property's taxable value (s 28) is computed as:

**Market value**

less liabilities, costs and expenses payable out of the gift or inheritance

= **incumbrance free value**

less consideration paid by acquirer in money or money's worth

**= taxable value**

Tax is charged on the **valuation date**. In the case of a gift, this is the date of the gift. In the case of an inheritance, it is generally the date of death, or the earliest date on which his personal representatives can retain the inherited property for the beneficiary (s 30).

## Rates of tax

### Inheritance tax

The rates applicable to gifts and inheritances are:

Threshold amount: **Nil**

The balance: **33%** (since 6 December 2012).

### Discretionary trust tax

Assets placed in discretionary trusts are subject to:

(a) A once-off charge of **6%**, which is due within four months of the valuation date (s 18).

(b) An annual charge of **1%**, which is due on 31 December each year, and payable four months later each year during the trust's lifetime (s 23).

## Exemptions

### Exemption thresholds

For 2017, the group thresholds (Schedule 2 para 1) are:

(a) **€310,000** (effective 12.10.2020, previously €225,000) (Group 1), where the beneficiary's relationship to the disponer is: son or daughter, minor child of a predeceased son or daughter, parent (in the case of a non-limited interest taken on the death of a child). Child includes a foster child and an adopted child.

(b) **€32,500**(Group 2, previously €30,150), where the beneficiary's relationship to the disponer is: lineal ancestor, lineal descendant (not within (a)), brother or sister, nephew or niece.

(c) **€16,250** (Group 3, previously €15,075), where your relationship to the disponer is: cousin or stranger.

For gifts and inheritances taken since 5 December 2001, only prior benefits received since 5 December 1991 from the same group threshold are aggregated with the current benefit in computing tax payable on the current benefit.

### Other exemptions

The main exemptions from CAT are:

(a) **Spouses' exemption**: Property taken from a spouse is exempt from gift tax (s 70) and inheritance tax (s 71).

The exemption also applies in the case of separated or divorced couples where the property passes by Court order (s 88).

(b) **Principal private residence.** To qualify, the beneficiary must have lived:

(i) for three years ending on the transfer date in the residence, or

(ii) for three of the four years ending on the transfer date in the residence and the residence which it has replaced.

The beneficiary must not have any other private residence and you must not dispose of the residence for six years after the transfer (s 86).

(c) An inheritance taken from a pre-deceased child (s 79).

(d) The first €3,000 of **gifts** taken in each calendar year (s 69).

(e) A gift or inheritance taken for public or **charitable** purposes (s 76).

(f) Objects of national, scientific, historic, or artistic interest, which the public are allowed to view (s 77). This relief also extends to **heritage property** owned through a private company (s 78).

(g) Pension lump sums (s 80).

(h) Securities acquired by a non-resident non-Irish domiciled beneficiary from a disponer who held them for at least three years (s 81).

(i) Personal injury compensation or damages, and lottery winnings. This also covers reasonable support, maintenance, or education payments received by a minor child if the child's parents dead (s 82).

(j) Property acquired under a self-made disposition (s 83).

## Reliefs

The main reliefs from CAT are:

(a) A widowed person can "stand in the shoes of" a predeceased spouse (Schedule 2 para 6).

(b) **Agricultural relief**. To qualify, the beneficiary must be a "farmer", i.e., **80%** of the gross market value of his assets must consist of agricultural property (i.e., farm land and buildings, crops, trees and underwood, livestock, bloodstock, and farm machinery) located in the EU.

The relief is a **90%** reduction of the full market value. The relief is withdrawn if the property is disposed of within six years and the proceeds are not reinvested within one year (six years in the case of a compulsory acquisition) (s 89).

(c) **Business relief**. To qualify, the property must be <u>relevant business property</u>, i.e., a sole trade business, an interest in a partnership, and unquoted shares in an Irish incorporated company.

The relief is a **90%** reduction of the taxable value. The relief is withdrawn if the property is disposed of within six years of the date of the gift or inheritance and the proceeds are not reinvested within one year of the disposal (s 92).

(d) **Favourite nephew** (or niece) relief (Schedule 2 para 7).

(e) **Double taxation** in respect of US and UK equivalent taxes (s 106, 107).

(f) The proceeds of a life policy taken out to pay CAT (s 72).

(g) If the same event gives rise to a liability to both CAT and CGT, the disponer's CGT can be credited against the recipient's CAT (s 104).

# CAT

## Self assessment

A CAT return must be filed, and the tax paid:

(a) on or before 31 October, If the valuation date falls between 1 January and 31 August in the same year,

(b) on or before 31 October in the following year, if the valuation date falls between 1 September and 31 December in the previous year.

A secondarily accountable person (i.e., the disponer, trustee, guardian, committee, agent or personal representative of the donee or successor), must file a return if requested to do so by the Revenue (s 46).

## Revenue powers

### Administration

The Revenue Commissioners are responsible for the administration of CAT (s 117).

### Audit

The Revenue may inspect any gifted property, and the books and records of the donor (s 46(7)).

### Anti-avoidance

A transfer of voting power attaching to private company shares without an actual transfer of shares, is taxed on the value of the transferred rights (s 44).

### Information

Revenue may use information acquired in relation to any tax or duty in connection with any other tax or duty for which they are responsible (TCA 1997 s 872).

Revenue gather information for CAT from inland revenue affidavits (s 48).

### Collection

#### Tax

CAT can be paid in five equal yearly instalments, inclusive of interest, the first of which is due 12 months after the due date. The instalment option is not available in respect of property taken by way of limited interest (s 54).

Revenue may take court proceedings against a non-compliant person (s 63).

#### Interest

Interest is charged at **0.0219%** for each day the tax remains unpaid (s 51(2)).

Interest is payable on overpaid tax at **0.011%** for each day or part of a day the tax is overpaid (s 57).

#### Surcharge

An understatement in the value of an asset may give rise to a surcharge (s 53) of:

(a) **10%** if the market value declared was 50%-67% of the true value,

(b) **20%** if the market value declared was 40%-50% of the true value,

(c) **30%** if the market value declared was less than 40% of the true value.

## Penalties

A person who fails to file a return is liable to a penalty of €2,535.

If the failure is negligent, the penalty is €6,345 plus the difference between the correct liability and the tax paid. If the failure is fraudulent, the penalty is €6,345 plus twice the difference between the correct liability and the tax paid (s 58).

See INCOME TAX (Penalties) as regards enforcement of penalties.

### Appeals

A person aggrieved by:

(a) a Revenue decision as to the value of land or buildings, may appeal to the Land Values Reference Committee (s 66),

(b) an assessment, may appeal to the Appeal Commissioners (s 67).