

CAPITAL ACQUISITIONS TAX

Capital Acquisitions Tax (“CAT”) includes both Gift Tax and Inheritance Tax and is a charge on the market value of the property comprised in the gift/inheritance. The person giving the benefit is known as “the disponent”, while the person receiving the benefit is known as “the beneficiary” and the act of giving the gift/inheritance is known as “the disposition”.

Gift tax is a tax payable on certain gifts made during the lifetime of the disponent. It is made when the person receiving the gift becomes beneficially entitled in possession to some property and does not give full market value for it. Examples would include a present of cash, a voluntary transfer of a house or lands or the free use of a house for life.

An inheritance on the other hand arises when property of any nature passes on a death to another person. It occurs when the beneficiary becomes entitled in possession under a disposition on a death under a Will or on intestacy (where no Will is made).

The tax is charged on the “taxable value” of the gift/inheritance. The taxable value is arrived at by deducting from the market value of the property comprised in the gift/inheritance, allowable debts and expenses (e.g. funeral expenses and solicitors costs) and any money or money’s worth paid by the beneficiary. Once the taxable value of the benefit has been determined, the sum chargeable to tax will be calculated after deduction of the beneficiary’s appropriate tax-free threshold. The threshold amount for each group is the amount below which no tax is payable and is not unlike one’s tax free allowance.

For the purpose of gift tax and inheritance tax the relationship between the disponent and the beneficiary at the date of the disposition determines the maximum tax free threshold. These group thresholds are set each year in the Budget. The current thresholds for gifts and inheritances taken after 10 October 2018 are as follows:-

Group	Relationship to Disponent	Threshold
A	Child including foster, adopted and step children and the minor child of a deceased child. Parent where they take an inheritance of an absolute interest from a child.	€320,000.00
B	Lineal ancestors, brother, sister	€32,500.00

and the child of a brother or
sister, grandparent, grandchild

C Relationship other than in A or B €16,250.00

However, any prior gifts/inheritances received by a beneficiary may also have to be taken into account in determining their tax free threshold. Any gifts and inheritances taken by a beneficiary in the same group threshold since the 5th of December 1991, will be added together with the current benefit to determine if there is CAT payable on the current benefit. Please note that prior to this date, different aggregation rules apply. The amount of the benefit in excess of the group threshold is known as the “taxable excess”. Any taxable excess is taxed at a rate of 33% for both gifts and inheritances. The person receiving the benefit is primarily liable for the payment of the tax to the Revenue Commissioners.

Reliefs & Exemptions

There are a number of reliefs and exemptions available which, with careful tax planning may help to eliminate or reduce a person’s tax liability. Some important Exemptions and Reliefs currently available are as follows:-

1. Small Gift Exemption

This exemption applies to gifts only and not to an inheritance. It is an annual exemption per calendar year from each disponent. The current Small Gift Exemption is €3,000.00. In effect, the first €3,000.00 of a gift is exempt.

2. Agricultural Relief

This is one of the most commonly used reliefs and is available for both gifts and inheritances. The relief operates by reducing the market value of gifts and inheritances of “agricultural property” by 90%. Agricultural property includes agricultural land, crops, livestock and houses and farm buildings appropriate to the agricultural property. To qualify for agricultural relief, the person receiving the gift or inheritance must qualify as a “farmer” at the valuation date. For the purposes of this test, a “farmer” means an individual in respect of whom at least 80% of his or her assets, after taking the gift/inheritance, consist of agricultural property on the valuation date.

Given that the full market value of the property is reduced by 90%, any liabilities or costs and expenses payable out of the property or any money paid for the property, are similarly reduced before being deducted to calculate the new taxable value.

The relief can be clawed back if the property is sold or compulsorily acquired within six years and not replaced within one year of the sale or within six years if compulsorily acquired. There is also a clawback if the land is sold for development purposes between year six and year ten after the date of the benefit. The relief can also be withdrawn if the beneficiary is not resident in the State for any of the three tax years immediately following the year of assessment.

3. Business Relief

This is a relief that is available on the transfer of a business and available for both gifts and inheritances of relevant business property. The relief will amount to a reduction of 90% in respect of the value attributable to relevant business property taken by the beneficiary. Relevant business property is defined as the business or an interest in the business. It is a business carried on for a gain and includes the exercise of a profession or vocation as well as a trade. It is important to note that individual assets used in the business will not qualify for the relief if transferred to the beneficiary without the business.

Businesses which wholly or mainly deal in currencies, securities, stock or shares, land or buildings or marketing and holding investments are not covered by the relief.

In order to qualify for the relief, the relevant business property must have been owned by the donor for a continuous period of five years prior to the date of the gift/inheritance. However, if the inheritance is taken on the death of the donor, the period is reduced to two years. The relief can be clawed back if the business ceases to trade or if any relevant business property is sold, redeemed or compulsorily acquired within a six year period and is not replaced within a year of the sale. A similar "development use" clawback as outlined above with agricultural relief can also arise. Agricultural property which fails to qualify for agricultural relief may qualify for business relief providing the relevant criteria are met.

4. In relation to gifts only, payments for support, maintenance and education of family members which form part of normal expenditure are exempt.

5. Lottery winnings are also exempt from CAT.

6. Spouses

Gifts and inheritances taken between spouses are not subject to CAT. It is as if the benefit never occurred. Certain gifts and inheritances between former spouses ordered by a Court on the dissolution of a marriage or afterwards are also exempt from CAT.

7. Dwellinghouse Relief

Where a dwellinghouse is inherited, the beneficiary is exempt from Capital Acquisitions Tax on the dwellinghouse if the following four conditions are fulfilled;

- a. The dwellinghouse was the only or main residence of the person who died (the donor).
- b. The beneficiary lived in the house as his or her main home for the 3 years prior to the death of the donor.
- c. The beneficiary does not own any other dwellinghouse or a share or interest in any other dwelling house.
- d. The dwelling house is the main home of the beneficiary for 6 years after the death of the donor. (This does not apply if the beneficiary is over 65 years of age).

8. Surviving Spouse Relief

If a person makes a gift or leaves an inheritance to the surviving spouse of a deceased relation, the surviving spouse "steps into the shoes" of the deceased spouse and can then take on the group threshold that their deceased spouse would have been entitled to.

9. Inheritances taken by Parents from their Children

Gifts from children to parents are normally taxable under Class B. However where an absolute inheritance is taken by a parent either under the will or intestacy of their child, the parent(s) can avail of the Group A threshold instead.

Where an inheritance is taken by a parent from a child on the death of the child, where the child had received a non-exempt gift or inheritance (currently over €3,000.00 in a given year) from either or both parents within five years immediately prior to the date of death of the child, then an absolute exemption on the inheritance can be availed of by the parent.

Please note that the issues addressed in this article are by way of introduction only. The various aspects of this tax can be complicated and difficult and many of the reliefs and exemptions depend on individual situations and specific requirements. Full Legal, Accounting and Tax advice should be sought prior to any transaction.

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April 2009 (Revised January 2019) Wolfe & Co. Solicitors
Market Street, Skibbereen, Co. Cork - web: www.wolfe.ie
Tel: 028-21177, fax: 028-21676, e-mail: info@wolfe.ie