Understanding
Capital Acquisitions Tax

Educating, Developing & Representing

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Irish Taxation Institute

About the Author

Marie Bradley is a Fellow of the Irish Taxation Institute (ITI) and is very involved with the activities of the ITI. She has assisted the Institute in preparing recent Finance Bill and Commission on Taxation submissions. She is joint author of the ITI publication, "Capital Allowances and Property Incentives" and is a lecturer for the Part 3 corporation tax course. Marie has broad experience in advising personal and corporate clients having trained and worked in small and medium sized firms prior to spending over eight years working in the taxation departments of PricewaterhouseCoopers and KPMG. She now runs her own tax consultancy practice, Bradley Tax Consulting, a boutique firm offering innovative taxation solutions to personal and corporate clients.

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Registered Tax Consultants are the experts in providing commercially focused tax advice to business and individuals. They also possess in-depth knowledge of all taxes operating in Ireland as well as the incentives and reliefs available. Only holders of the AITI (Associate of the Irish Taxation Institute) qualification who are current members of the Irish Taxation Institute can use the title "Registered Tax Consultant". For more information visit www.taxireland.ie.

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Understanding Capital Acquisitions Tax

Question

How is Capital Acquisitions Tax (the term used to describe both gift tax and inheritance tax) calculated and when is it paid?

Answer

Capital acquisitions tax (CAT) is a tax on gifts and inheritances. The current rate of CAT is 25% for gifts and inheritances taken on or after 8 April 2009 (previously 22% for gifts and inheritances taken between 20/11/08 – 07/04/09 inclusive and 20% for gifts and inheritances taken prior to 20/11/08). The amount of tax payable is dependent on the relationship between the disponer (the person who makes the gift/inheritance) and the beneficiary and the level of previous gifts or inheritances received by the beneficiary from persons within the same group threshold. Individuals are permitted to take, free of CAT, benefits up to the value of their group threshold. There are three group thresholds and these are:

Group	Relationship to Disponer	2008	1/01/09 to 7/4/09	From 8/4/09
A	Child/Foster Child/Minor Child of a Deceased child	€521,208	€542,544	€434,000
B	Lineal ancestor or lineal descendant: brother, sister, child of brother or sister	€52,121	€54,254	€43,400
C	Others	€26,060	€27,127	€21,700

The group thresholds are updated in January each year to account for inflation. However, Finance Act 2009 reduced the group tax thresholds for gifts and inheritances taken on or after 8 April 2009. When calculating CAT, prior gifts or inheritances received from a person within the same group threshold (since 5 December 1991) are aggregated with the current benefit. CAT is paid on the excess (if any) of the value of the current benefit over the group threshold after taking any aggregable prior benefits into account (and the annual small gift exemption, where appropriate – see below).

The following example will help illustrate the point:

Facts

On 1 January 2009 Audrey gifts an investment property with a market value of €1m to her daughter, Anneka. Anneka had previously received a cash gift of €50,000 from her father in 2003 to help her purchase a dwelling house. Anneka's CAT liability on the gift of the property worth €1m is calculated as follows:

Market Value of Gift in 2009	€1,000,000
Less small gift exemption	(€3,000)
Taxable value of Gift in 2009	€997,000 (A)
Prior aggregable benefit	€47,000 (B)
(after deduction of small gift exemption)	€47,000 (B)
GroupThreshold A 1/1/2009	€542,544 (C)
Unused Portion of Group Threshold	€495,544 (D) (C – B)
Taxable Current Benefit	€501,456 (A – D)
CAT at 22%	€110,320

Anneka is primarily responsible for paying the CAT of €110,320 within 4 months of 1 January 2009. Audrey is secondarily liable to discharge this CAT.

Individuals are permitted to receive up to €3,000 per tax year CAT free from any person. This is known as the small gift exemption and applies to gifts only (not inheritances).

CAT must be paid within 4 months of the valuation date. The valuation date is defined in the CAT legislation and generally means the date that the beneficiary becomes beneficially entitled in possession to the gift or inheritance. For example, for a gift of cash – the valuation date would be the date the cash is paid to the beneficiary, for a gift of an investment property – the valuation date would be the date the investment property is transferred to the beneficiary. If the value of the gift or inheritance equals or exceeds 80% of the beneficiary's group threshold, then the beneficiary must file (also within 4 months, of the valuation date) a CAT Return (Form IT38) with the Revenue Commissioners disclosing details of the benefit. Therefore, a CAT return may have to be filed even if no CAT is payable on the gift/inheritance. If the CAT liability is paid or the Form IT38 is filed later than 4 months penalties and interest charges may apply. In addition, the disponer of a gift must (where the value of the gift equals or exceeds 80% of the beneficiary's group threshold) file a further CAT return (form GT15) disclosing details of the gift. This form must also be filed with the Revenue Commissioners within 4 months of the valuation date.

Question

What are the main CAT reliefs?

Answer

1. **The small gift exemption**

   This has been discussed above.

2. **Agricultural Relief**

   This is a relief that applies to gifts or inheritances of "agricultural property" located in a Member State of the European Union (prior to 20th November, 2008 the definition of Agricultural Property included land, pasture and woodland situated in the State only.) This term is defined in the CAT legislation and includes farm land, farm machinery, livestock, farmhouse and out buildings etc. For the relief to apply, the beneficiary's agricultural assets (at the valuation date) must be equal to or greater in value than 80% of his/her total assets.

   If this is the case, then the market value of the agricultural property is reduced by 90% and this is the amount that the beneficiary is deemed to have received for CAT purposes. CAT is then calculated in the normal manner, which is set out above. To avoid a clawback of the relief the beneficiary must retain ownership of the agricultural property the subject of the gift/inheritance for 6 years. There is no clawback where some or all of the agricultural property is disposed of or compulsorily acquired within the 6 year period and the proceeds are reinvested in further qualifying agricultural property within a year of the disposal or 6 years of the compulsory acquisition.

   Where land which had development potential at the date of the gift or inheritance and qualified for relief is disposed of by the donee in the period commencing 6 years after the date of the gift/inheritance and ending 10 years after that date, the relief granted will be clawed back in respect of the development value of the land at the date of the gift/inheritance. This provision applies in respect of gifts and inheritances taken on or after 2 February 2006 (and from 1 January 2005 in the case of the EU Single Farm Payment Entitlement). In the case of gifts or inheritances taken on or after 1 February 2007, borrowings may be deducted from the value of "off-farm" principal private residences.

3. **Business Property Relief**

   This is a relief that applies to gifts or inheritances of "relevant business property". This phrase is defined in the CAT legislation and would include, for instance, transfers of business assets owned by a sole trader, shares in a trading company, etc. There are strict conditions to be satisfied in order for the relief to apply including, inter alia, ownership and control tests for the beneficiary to satisfy following the gift or inheritance. Where the relief applies the taxable value of the relevant business property is reduced by 90%. To avoid a clawback of the relief the beneficiary must retain ownership of the relevant business property for 6 years.

   However, where some or all of the relevant business property is sold within 6 years of the gift or inheritance and the sale proceeds are reinvested in further qualifying relevant business property there is no clawback of the relief.

Where land which had development potential at the date of the gift or inheritance and qualified for relief is disposed of by the donee in the period commencing 6 years after the date of the gift/inheritance and ending 10 years after that date, the relief granted will be clawed back in respect of the development value of the land at the date of the gift/inheritance. This provision applies in respect of gifts and inheritances taken on or after 2 February 2006 (and from 1 January 2005 in the case of the EU Single Farm Payment Entitlement). To qualify for the relief the relevant business property must have been owned for a continuous period of 5 years prior to the date of the gift/inheritance. If the gift/inheritance is taken on the death of the disponer the relevant period is 2 years prior to the date of the gift/inheritance.

4. Dwelling house Relief

Under this relief a dwelling house may be gifted or inherited free of CAT provided the donee or the successor:

- » continuously occupied the dwelling house as his or her only or main residence for the three years immediately preceding gift or inheritance;
- » is not (at the date of the gift or inheritance) beneficially entitled to any other dwelling house or to any other interest in any other dwelling house;
- » continues to occupy the dwelling house as that donee's (or successor's) only or main residence for 6 years following the gift or inheritance (unless he or she has reached the age of 55 years at the date of the gift or inheritance).

In relation to the 3 year period of occupancy, any period whereby the donee and the donor occupied the dwelling (the subject of the gift) will be disregarded for the purpose of the relief, unless they lived together due to the dependence of the donor or the donee by reason of old age or infirmity.

The disponer must own the dwelling house for the three year period, therefore ruling out gifts from certain entities e.g., companies or discretionary trusts.

The exemption may be withdrawn where the donee or successor disposes of the dwelling house within the 6 year period. However, the clawback will not apply where the proceeds of sale are reinvested in certain residential property and where certain conditions are met.

Where replacement property is the subject of a gift on or after 1 February 2007, the period of occupancy of the replaced property by the recipient will only be taken into account where the replaced property was also owned by the disponer prior to the date of the gift (previously where a parent gifted a property to a child to replace the child's own property, the child could count the period of occupation in their own dwelling house for the purposes of the 3 out of 4 year occupancy rule). Where this exemption is claimed and subsequent events give rise to a clawback, interest on the tax due will run from the date of the event giving rise to the clawback and not the original date of the inheritance/gift.

5. Capital Gains Tax (CGT) / Capital Acquisitions Tax Set-Off

Where CGT and CAT arise on the happening of the same event, the CAT legislation provides that the CGT paid may be deducted from the corresponding CAT liability as a credit against the CAT liability. A recent change in the legislation imposes a clawback of the relief in the event that the beneficiary disposes of the property the subject of the benefit within 2 years of receiving the benefit. This relief could be availed of say, where a parent gifts an investment property to their son or daughter (and the investment property is retained by the son or daughter for 2 years from the date of the gift). The parent would have made a disposal for CGT purposes and CGT could arise. The child could have a CAT liability in respect of the gift. As the CGT and CAT arise on the same event the CGT paid may be offset against the CAT.

6. **Spousal Exemption**

   Since 31 January 1995 all inheritances between spouses have been exempt from CAT. Since 31 January 1990 all gifts between spouses have been exempt from CAT.

Question

Will I have to pay CAT if I buy a house with my partner and he or she predeceases me?

Answer

The group threshold C (€21,700 from 8 April 2009) will apply and it is likely that you will pay CAT at 25% on the excess of the value of the inheritance over the appropriate group threshold after taking any aggregable prior benefits into account. The Government is expected to publish legislation on civil partnerships that will extend some of the benefits and legal obligations of marriage to civil partnerships. Tax benefits (including CGT and CAT) arising from civil partnerships are expected to be provided for at a later date.

Question

What happens if I do not pay CAT or file a CAT return in respect of a gift of an investment property?

Answer

Interest and penalties will arise on any unpaid CAT liability from the valuation date. In such cases no account is given for the 4 month grace period granted to pay CAT and file a CAT return. Simple interest at the rate of .0219% per day or part of a day (prior to 1 July 2009, 0.0273%) is payable from the valuation date to the payment date. Furthermore, Revenue has the power to place a charge on the property in respect of the amount of CAT payable. Practically, this means that if the property is sold within 12 years of the gift, a CAT clearance certificate must be obtained from Revenue confirming that all CAT has been paid in respect of the gift and that the CAT is not attached by way of charge to the property. In addition, failure to deliver a CAT return can also result in penalties arising.

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Irish Taxation Institute

Irish Taxation Institute
South Block
Longboat Quay
Grand Canal Harbour
Dublin 2
Tel.: **+ 353 1 6631700**
Fax: **+ 353 1 6688387**

www.taxireland.ie