

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 10: Reliefs


 <p>Revenue Cáin agus Custaim na hÉireann Irish Tax and Customs</p>	<p>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.</p>
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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 The relief will be withdrawn if agricultural land is disposed of within 6 years of the valuation date of the gift or inheritance and is not replaced, within 1 year of the disposal or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 of the valuation date of 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 disposed of 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 disposed of in the period commencing 6 years after the valuation 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

89 Agricultural relief

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. Finance Act 2014 amended the definition of “farmer” to include additional requirements that the individual availing of the relief actively farms the land or leases it to an active farmer.

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 within 6 years of the date of the gift or inheritance and is not replaced, within 1 year of the disposal or where the disposal is pursuant to a compulsory acquisition within 6 years of that compulsory acquisition, by other agricultural property. However, land that a spouse / civil partner had transferred to his or her spouse / civil partner will not qualify as replacement property for this purpose. Where the proceeds from a disposal 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. A clawback of relief will apply in full where the property is disposed of by way of a gift and there are no proceeds.

Details

“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 (1), houses (together with the lands occupied with such property) as are of a character appropriate to the property and (1A) farm machinery, livestock and bloodstock on such property and payment entitlements under the EU Basic Income Support for Sustainability (BISS) mechanism;

“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 (within the meaning of Chapter 2 of Part 3) 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 or 2A to the Stamp Duties Consolidation Act 1999 (in relation to young trained farmers), or of a trained farmer qualification within the meaning of section 654A of the Taxes Consolidation Act 1997, 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 FA 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.

“solar panel” means a ground mounted piece of equipment used to convert solar energy into electrical energy together with ancillary equipment used to harness and transfer the electrical energy. Provided that: **(1B)**

- solar panels are not installed on more than half of the area of the agricultural land provided in the gift or inheritance, and
- the conditions specified in paragraphs (i), (ii) or (iii) of subsection (1) are met in respect of the land not under solar panels,

then for the purposes of the definition of “agricultural property” in subsection (1), land on which solar panels has been installed shall be regarded as agricultural land, and

where the land on which solar panels are installed is leased, the lessee will be considered to have leased the whole or substantially the whole of the agricultural property, even where less has been leased, and to have satisfied the conditions specified in paragraphs (i), (ii) or (iii) of that subsection.

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: **(2)**

- 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.

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Where a donee or successor receives a gift or inheritance subject to the condition that it is to be invested in whole or **(3)** in part in agricultural property, the gift or inheritance will qualify for agricultural relief as if it consisted of agricultural property:

- 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 valuation date of the gift or inheritance the **(4)(a), (aa)** agricultural property (other than crops, trees or underwood) is disposed of in whole or in part, other than by way of a lease referred to in paragraph (iii) of the definition of 'farmer' in subsection (1), 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:

- 1 year of the disposal, or
- 6 years where disposal is due to compulsory acquisition

relief will be clawed back in respect of the amount of the proceeds not re-invested, except where the donee or successor dies before the property is disposed.

For the purposes of the clawback in paragraph (a) the proceeds from a disposal include:

- an amount equal to the market value of any non-cash consideration where full consideration is received,
- an amount equal to the market value of the property where less than full consideration is received.

If an arrangement is made, in the course of administration, under which agricultural property is appropriated to **(4)(b)** 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)**.

Where the proceeds referred to in **subparagraph (ii)** of **subsection (4)(a)** are expended in acquiring agricultural **(4A)** 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.

The section provides for a clawback of agricultural relief where a person ceases to qualify as a "farmer" within six **(4B)** years of the valuation date of the gift or inheritance.

- The clawback is triggered only where the individual ceases to meet the active farmer test in relation to the definition of a farmer, (the 80% asset test applies only at the valuation date).
- Where agricultural relief is being claimed in respect of a gift or inheritance conditional upon investment of the gift or inheritance in agricultural property in accordance with section 89(3), the clawback period under subsection (4B) in relation to that gift or inheritance will commence on the date that gift or inheritance is invested in agricultural property.

Where agricultural relief is to be clawed back pursuant to section 89(4)(a) or section 89(4B), the taxpayer is to file an **(4C)** additional return and pay any outstanding tax in accordance with section 46(9) CATCA 2003.

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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 property as being comprised in his/her inheritance at the date of the inheritance and at the valuation date. (5)

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

Summary

This section defines the terms used in this Chapter.

Details

“agricultural property” has the meaning assigned to it by *section 89*; (1)

“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” has the meaning assigned to it by section 8(1) of the Companies Act 2014;

“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*.

“subsidiary” has the meaning assigned to it by section 7 of the Companies Act 2014.

“undertaking of substantial interest” shall be construed in accordance with section 314(1)(b) of the Companies Act 2014.

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 undertaking of substantial interest of that company or of any of its subsidiaries and any subsidiary of such an undertaking of substantial interest 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)* (4) – see note on that subsection.

91 Application

Part 10: Reliefs

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 disponent.

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

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Where the business of a company consists wholly or mainly (i.e. in excess of 50%) of being a holding company (4) 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.

Land, buildings, machinery or plant which qualifies under **subsection (1)** must be transferred at the same time (5) 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 disponent includes a reference to a life tenant (6), (7) 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.

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 disponent, 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 disponent, that minimum period is 2 years. In the case of a gift made during the lifetime of the disponent, 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 disponent 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 disponent, 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 disponent and if the disponent 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 disponent'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 disponent 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 disponent). Again, periods of ownership of the disponent, 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

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This section provides that relevant business property that has replaced other relevant business property does not qualify for the relief unless the donor, 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 donor, 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 (1) are comprised in the disposition:

- in the case of an inheritance taken on the death of the donor, 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 (2) restricted to what it would have been had the replacement not been made.

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 to €120,000 as follows:

$$\begin{array}{r} \text{€100,000} \times \text{€180,000} = \text{€120,000} \\ \text{€150,000} \end{array}$$

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 (3) the Act) by the former owner of the business, are disregarded.

96 Succession

This section ensures that where a donor became beneficially entitled to any property on the death of another person, that donor 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 donor 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 donor'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.

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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:

$$\frac{€ 100,000 - € 10,000}{€100,000} = 9/10$$

Amount of subsequent benefit which will qualify for relief:

€100,000 x 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)

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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 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 disponent or a member of that group. **(2)**

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 disponent 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

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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 donor 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 donor’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 donor; 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 donor’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 donor, 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 donor or the donor’s spouse/civil partner.

Part 10: Reliefs

Where only part of the land or building is used for the purposes of the business, the land or building will be treated (5) 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.

The term “relevant period”, in relation to an asset for the purposes of this section, is defined as the period (6) 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.

An asset will be deemed not to have been used wholly or mainly for the purposes of the business at any time when (7) it was used wholly or mainly for the personal benefit of the disponent or of a relative of the disponent.

That part of the value of shares in a company which is attributable to an entirely new business (i.e. not a (8) replacement of an existing business) acquired during the minimum ownership period is excluded from the relief.

The general replacement assets provisions for business relief will apply where one trading subsidiary in a group has (9) been replaced by another qualifying company within the minimum ownership period laid down for the relief.

101 Withdrawal of relief

Summary

This section provides for a clawback of business relief in the event that the business concerned is disposed of in whole or in part or ceases to be a qualifying business within 6 years of the valuation 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 valuation date of the gift or inheritance (1)

Part 10: Reliefs

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, is disposed of in whole or in part within the relevant period and is not replaced within a year of the disposal 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.

The relief will not be clawed back where the person who claimed the relief dies before the event that would otherwise trigger the clawback.

Where the original property has been replaced, directly or indirectly, by other property and the market value of **(3)** 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.

Where business relief is to be clawed back pursuant to section 101(2)(a) or (b), the taxpayer is to file an additional **(3A)** return and pay any outstanding tax in accordance with section 46(9) CATCA 2003.

“division” means a division undertaken in accordance with Chapter 4 of Part 9 of the Companies Act 2014. **(4)(a)**

“merger” means a merger undertaken in accordance with Chapter 3 of Part 9 of the Companies Act 2014.

“successor company” means a company to which assets and liabilities have been transferred from a transferor company as a result of a merger or division.

“transferor company” means a company from which assets and liabilities have been transferred to a successor company or successor companies as a result of a merger or division.

The clawback provisions will not apply where the relevant business property was transferred from a transferor **(4)(b)** company to a successor company as a result of a merger or a division.

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

Part 10: Reliefs

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 valuation 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 whole or in part in the period commencing 6 years after the valuation 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. Where a clawback occurs under this section an additional return shall be delivered to the Commissioners, and any outstanding tax paid, in accordance with section 46(9).

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

Summary

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 (2) 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.

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.

Part 10: Reliefs

Details

Where either gift tax or inheritance tax and capital gains tax are charged on the happening of the same event⁽¹⁾ 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	Credit	Total
CAT	€1,000	€800	(€1,000)	€800
CGT	€1,500	n/a	n/a	€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 €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.

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. ⁽²⁾

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. ⁽³⁾

Subsection (3A) disapplies the usual clawback of the credit where the asset is disposed of within 2 years after the date of the gift or the inheritance in the case of a life assurance policy that must be cashed in and cannot be retained for the 2-year period. ^(3A)

“division”, “merger”, “successor company” and “transferor company” have the meanings assigned to them in section 101(1). ⁽⁴⁾

The transfer of an asset from a transferor company to a successor company shall not be regarded as a disposal for the purposes of subsection (3).

105 Allowance for prior tax on the same event

Summary

Part 10: Reliefs

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

Part 10: Reliefs

If the Government by order declares that arrangements have been made with the government of another territory to (1) 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.

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 (4) the force of law under this section.

Any order made under the section may be revoked by a subsequent order, and any such revoking order will contain (5)(a) such transitional provisions as appear to the Government to be necessary.

Any order under the section will not be made until a draft of that order is laid before Dáil Éireann and a resolution (5)(b) approving of the draft has been passed by the Dáil.

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

Part 10: Reliefs

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)**

