NOTES FOR GUIDANCE

CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

(as amended by subsequent Acts up to and including the Finance Act 2024)

Part 2: Gift Tax

	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 Act 2024.

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PART 2 GIFT TAX

Overview

This Part contains provisions dealing with gift tax. What is charged to tax as a gift is the property to which a donee becomes beneficially entitled in possession. Where a benefit is taken "on a death" within the meaning of ***section 3***, it will be liable to inheritance tax and not gift tax. If the property is purchased for full consideration in money or money's worth, no charge to tax arises.

The expression "taxable gift" is defined. The treatment, for tax purposes, of joint tenancies and the prevention of tax avoidance by gift-splitting is also provided for.

4 Charge of gift tax

This section imposes the charge to gift tax. The tax is charged on the taxable value (see ***section 28***) of every taxable gift (see ***section 6***) taken by a donee.

5 Gift deemed to be taken

Summary

This section identifies the type of benefits which will be a gift for the purposes of gift tax, distinguishes a gift from an inheritance and identifies the property which is to be valued for gift tax purposes.

Details

(1) A person is deemed to take a gift when, under or as a consequence of a disposition, he/she becomes beneficially entitled in possession to a benefit. He/she is deemed to take a gift whether or not he/she already has some interest in the property in which he/she takes that benefit. In order to be regarded as a gift, the benefit must arise "otherwise than on a death". Most dispositions are for full consideration in money or money's worth. No question of a gift arises if full consideration has been paid. Normal commercial standards of value apply in determining whether a gift is deemed to be taken.

(2)(a) A gift is deemed to consist of the whole, or the appropriate part, as the case may be, of the property in which the donee takes a benefit, or on which it is charged or secured or which the donee is entitled to have it charged or secured (see note on ***subsection (5)*** regarding the meaning of "the appropriate part"). It will be noted that what is valued is not the particular interest taken by the beneficiary but the *property* in which he/she takes the interest.

(2)(b) Where annuities or other periodic payments are not charged or secured on property, they are treated as consisting of a capital sum equal to an amount which, if invested in the Government security most recently issued prior to the date of the gift, would yield an income equal to the annuity or periodic payment. The relevant security must be redeemable not less than 10 years after the date it is issued.

Example

A executes a deed of covenant whereby he covenants to pay B an annual sum of €1,000 for 7 years. The last security issued prior to the execution of the deed of covenant was 9% Government Bond 2001 issued on 21 May 1991. In order to obtain an income of €1,000 from this stock, a holding of—

$$\frac{€1{,}000 \times 100}{9} = €11{,}111$$

would be required.

If the stock is quoted at 97.5 cent, €11,111 of stock would cost—

$$\frac{€11{,}111 \times 97.5}{100} = €10{,}833$$

The capitalised value of an income of €1,000 per annum is, therefore, €10,833 using this method.

This subsection provides that for the purposes of **sections 6(1)(c)** and **6(2)(d)** the sum referred to in **subsection (2)(b)** is deemed not to be situate in the State at the date of the gift. **(3)**

Pursuant to **section 6(1)** a gift taken under a disposition where the date of the disposition is **before 1 December 1999** is not within the territorial scope of capital acquisitions tax where –

- in the case of a gift other than a gift taken under a discretionary trust, the disponer is not domiciled in the State at the date of the disposition;
- in the case of gift taken under a discretionary trust –
  - the disponer is not domiciled in the State at the date of the disposition, or
  - if the gift was taken after the disponer's death, the disponer was not domiciled in the State at the date of the gift; and
- the property that the gift consists of is not situated in the State at the date of the gift.

The effect of section 5(3) on these territorial rules is that tax will not be charged on the notional sum deemed to exist for the purposes of section 5(2)(b) if the disponer is not domiciled in the State on the relevant dates referred to above.

Pursuant to **section 6(2)** a gift taken under a disposition where the date of the disposition is **on or after 1 December 1999** is not within the territorial scope of capital acquisitions tax where –

- the donee was not resident or ordinarily resident in the State at the date of the gift;
- in the case of a gift other than a gift taken under a discretionary trust, the disponer is not resident or ordinarily resident in the State at the date of the disposition;
- in the case of gift taken under a discretionary trust –
  - the disponer is not resident or ordinarily resident in the State at the date of the disposition or at the date of the gift, or
  - if the gift was taken after the disponer's death, the disponer was not resident or ordinarily resident in the State at the date of his or her death; and
- the property that the gift consists of is not situated in the State at the date of that gift.

The effect of section 5(3) on these territorial rules is that tax will not be charged on the notional sum deemed to exist for the purposes of section 5(2)(b) if the donee is not resident or ordinarily resident in the State at the date of the gift **and** the disponer is not resident or ordinarily resident in the State on the relevant dates referred to above.

[Because under section 5(2)(b) the notional sum is deemed to consist of Irish Government securities, that notional sum would be deemed to be located in this country and might be taxable in the absence of this provision.]

Where the whole or part of the consideration is an interest for the disponer's lifetime and the transferee is a relative of the disponer (see the definition of "relative" in ***section 2(1)***), that interest is not treated as consideration for the purpose of deciding whether a gift has been taken. It may, however, be treated as partial consideration for the purposes of ***section 28***. This provision is aimed at an artificial "sale" between relatives where the transferor "pays" for the benefit taken out of the gift itself. **(4)**

The "appropriate part" means, in effect, the part of the property which is sufficient to meet the benefit which is charged or secured on the property. It is calculated in accordance with the following formula: **(5)**

$$\text{Entire property} \times \frac{\text{gross annual value of benefit}}{\text{gross annual value of entire property}}$$

Example

If A transfers land to B absolutely, subject to and charged with an annuity of €10,000 per annum payable to C for life, and the land produces an income of €30,000 per annum, the gift taken by C is deemed to consist of one-third of the land. The gift taken by C is "the appropriate part".

C is treated, in effect, as taking a life interest from A in one-third of the land and B is treated as taking an absolute interest from A in two-thirds of the land. Under ***section 28(4)***, C's life interest is valued in accordance with ***Schedule 1***.

When C dies, B will be deemed to take an inheritance of "the appropriate part" of the property then set free by the cesser of the annuity (see ***section 37***) from A absolutely.

Where a person acquires a right to a benefit, but that right is not legally enforceable because of lack of evidence (e.g. a memorandum sufficient to satisfy the Statute of Frauds) and the gift is completed at a later date, the gift is deemed to be taken at the later date. **(6)**

Where a gift arises on the transfer of shares in a family-controlled private company, the value of such shares is ascertained for gift tax purposes in accordance with ***section 27***. Genuine arm's length sales are excluded from this provision, however. **(7)**

6 Taxable gift

Summary

Where a gift is taken under a disposition made before 1 December 1999, all the property comprised in the gift is liable to tax where the disponer is domiciled in the State. Property located in the State is liable to tax irrespective of the domicile of the disponer.

Where a gift is taken under a disposition made on or after 1 December 1999, all the property comprised in the gift will be liable to tax where—

- the disponer is resident or ordinarily resident in the State at the date of the disposition, or
- where the donee (i.e. the beneficiary) is resident or ordinarily resident in the State at the date of the gift.

A foreign-domiciled person will not be considered to be resident or ordinarily resident in the State until 1 December 2004 and then only if he/she has been resident in the State for the 5 consecutive tax years preceding the relevant date.

Special rules apply to the taxation of gifts taken by donees from discretionary trusts.

Details

Where a gift is taken under a disposition made prior to 1 December 1999, the entire property comprised in the gift is liable to tax where, at the date of the disposition, the disponer is domiciled in the State. **(1)**

Example

A, who was domiciled in the State on 1 January 1999, transfers property to trustees on trust to B for 10 years and, at the end of that time, to C absolutely. The entire property, wherever it is situated, is liable to gift tax when C comes into possession of his/her interest, notwithstanding, for example, that the disponer is no longer domiciled in the State at that time.

If the disponer was not domiciled in the State at the date of the disposition, only so much of the gift as is located in the State at the date of the gift is liable to tax.

There are separate rules for determining to what extent, if any, a gift taken under a discretionary trust is taxable. Such a gift is taxable where the disponer was domiciled in the State:

- at the date of the disposition under which the donee takes the gift (generally the date the trust was created), or

- at the date of the gift,

or was so domiciled at the time of his/her death, where the gift was taken after his/her death.

Where a gift is taken under a disposition made on or after 1 December 1999, the entire property comprised in the gift is liable to tax in the following situations: **(2)**

- where the disponer is resident or ordinarily resident in the State at the date of the disposition;
- where the gift is taken under a discretionary trust and the disponer is resident or ordinarily resident in the State at the date of the disposition *or* at the date of the gift;
- where the gift is taken under a discretionary trust after the death of the disponer and that disponer was resident or ordinarily resident in the State at the date of his/her death; or
- where the beneficiary is resident or ordinarily resident in the State at the date of the gift.

Property located in the State is liable to gift tax, irrespective of the residence or ordinary residence of the disponer or the donee.

A right to the proceeds of sale of property is deemed to be located in the State to the extent that such property is unsold and situated in the State. **(3)**

A foreign-domiciled person will not be considered to be resident or ordinarily resident in the State until 1 December 2004 and then only if he/she has been resident in the State for the 5 consecutive tax years preceding that date. **(4)**

"company" and "share" have the same meanings as they have in ***section 27***; "company controlled by the donee" has the same meaning as is assigned to "company controlled by the donee or successor" by ***section 27***. **(5)(a)**

A person cannot artificially change the location of Irish assets by transferring them into a foreign, family-controlled private company. The measure operates by deeming the proportion of the value of a share in a foreign company that is directly or indirectly attributable to underlying Irish assets to be property located in the State. **(5)(b)**

The measure in ***subsection 5(b)*** will not apply to a disponer who was foreign domiciled at all times up to and including the date of the gift, or, in the case of a gift taken after the death of the disponer, up to and including the date of death of that disponer or where the share in question is actually located in the State at the date of the gift. **(5)(c)**

7. Liability to gift tax in respect of gift taken by joint tenants

This section provides that where persons become beneficially entitled in possession to a gift as joint tenants, their liability to tax will be the same as if they took the gift as tenants in common in equal shares. The rationale behind the section is that each joint tenant could become the absolute owner of a share in the property by severing the joint tenancy.

8. Disponer in certain connected dispositions

Summary

This section seeks to prevent tax avoidance by gift-splitting. Where 2 or more gifts are made by successive disponers within 3 years, the second or subsequent gift is deemed to have been made by the original disponer to the ultimate beneficiary. Genuine cases are excluded from the scope of the section.

Details

Where 2 or more gifts are made by successive disponers within a period of 3 years, the second or subsequent gift is deemed to have been made by the original disponer to the ultimate beneficiary. **(1)**

Example

A gifts property to B. B gives it to C who, in turn, gives it to D. The gifts are made within 3 years. C and D are deemed to take their gifts from A

The section does not apply where the second or subsequent disposition was not made with a view to enabling or facilitating the making of the first disposition or the recovery of the cost of that disposition. **(2)**