NOTES FOR GUIDANCE

CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

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

Part 9: Exemptions

	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.

Table of Contents

PART 9 EXEMPTIONS 2

Overview 2

69 Exemption of small gifts 2

70 Exemption for spouses (gifts) 2

71 Exemption for spouses (inheritances) 2

72 Relief in respect of certain policies of insurance 2

73 Relief in respect of certain policies of insurance relating to tax payable on gifts 5

74 Exemption of certain policies of assurance 6

75 Exemption of specified collective investment undertakings 7

76 Provisions relating to charities, etc. 8

77 Exemption of heritage property 8

78 Heritage property of companies 9

79 Exemption of certain inheritances taken by parents 10

80 Payments relating to retirement, etc. 10

81 Exemption of certain securities 11

82 Exemption of certain receipts 12

83 Exemption where disposition was made by the donee or successor 14

84 Exemption relating to qualifying expenses of incapacitated persons 14

85 Exemption relating to retirement benefits 14

86 Exemption relating to certain dwellings 15

87 Exemption of certain benefits 18

88 Exemption of certain transfers from capital acquisitions tax following dissolution of marriage or civil partnership 18

88A Certain transfers by qualified cohabitants 18

PART 9 EXEMPTIONS

Overview

This Part of the Act deals with exemptions from tax. Among the principal exemptions are gifts and inheritances for public or charitable purposes, gifts and inheritances of heritage property, certain inheritances taken by parents, gifts and inheritances of certain securities, gifts and inheritances from spouses, the proceeds of certain insurance policies taken out to pay gift tax and inheritance tax and gifts and inheritances which consist of the principal private residence of the person taking the gift or inheritance.

69 Exemption of small gifts

Summary

This section provides that the first €3,000 of the total taxable value of all taxable gifts taken by a donee from the same disponer in any year will be disregarded for the purposes of tax. The section also applies to a gift which becomes an inheritance by reason of the death of the disponer within 2 years of the disposition.

Details

"relevant period" means the period of 12 months ending on 31 December in each year. **(1)**

The first €3,000 of the total taxable value of all gifts taken by a donee from one disponer in any relevant period is exempt from tax and is not taken into account in computing tax (i.e. is not aggregated with subsequent gifts or inheritances for the purpose of calculating tax on the later gift or inheritance). **(2)**

The exemption is granted for any gift which becomes an inheritance by reason of the death of the disponer within 2 years of making the disposition. **(3)**

70 Exemption for spouses (gifts)

A gift taken by a person who is the spouse/civil partner of the disponer at the date of the gift is exempt from gift tax and is not taken into account in computing tax.

71 Exemption for spouses (inheritances)

An inheritance taken by a person who is the spouse/civil partner of the disponer at the date of the inheritance is exempt from inheritance tax and is not taken into account in computing tax.

72 Relief in respect of certain policies of insurance

Summary

This section grants exemption in respect of the proceeds of certain life insurance policies which would otherwise be liable to inheritance tax on the death of the insured person. The section provides that the proceeds of any qualifying insurance policy taken out under the section by an insured person on his/her life will be exempted from inheritance tax in so far as such proceeds are used to pay approved retirement fund tax, being tax which a qualifying assurance manager is obliged to deduct in accordance with the provisions of section 784A(4)(c) of the Taxes Consolidation Act 1997, i.e. tax payable in respect of a child aged 21 or over on the death of the beneficial owner of an approved retirement fund (ARF) or inheritance tax arising on his/her death, or within a year of his/her death, under a disposition made by him/her (e.g. under his/her will). Any part of the proceeds not so used is liable to inheritance tax.

The exemption also applies to joint policies effected by spouses to cover inheritance tax payable—

- on the death of the surviving spouse/civil partner,
- on the simultaneous deaths of both of them, or
- in the event of the surviving spouse/civil partner dying within 31 days of the death of the other spouse/civil partner.

It also applies where a policy is taken out by a life tenant to pay the tax arising on his/her death under a disposition made by someone other than that life tenant.

Details regarding the policies that qualify for the exemption are set out in CAT TDM Part 15 Insurance Policies

Details

"approved retirement fund tax" means tax which a qualifying fund manager is obliged to deduct in accordance with the provisions of section 784A(4)(c) of the Taxes Consolidation Act 1997, i.e. tax payable in respect of a child aged 21 or over on the death of the beneficial owner of an approved retirement fund (ARF). An approved retirement fund is an alternative to an annuity and takes the form of a capital sum on retirement that can be retained in a tax-free vehicle until distributions are made from the fund. **(1)**

"insured" means an individual and his/her spouse/civil partner provided—

- they were a married couple or registered civil partners at the date the policy was effected,
- annual premiums are paid by either or both of them during their joint lives and by the survivor of them during the life of the survivor, and
- the proceeds of the policy are payable on the death of such survivor, or on the simultaneous deaths of such spouses/civil partners.

Where the proceeds of the policy are payable on the death of the surviving spouse/civil partner, "insured" means that surviving spouse/civil partner. The proceeds of the policy are deemed to have been provided by such survivor, as disponer.

Where the proceeds of the policy are payable on the simultaneous deaths of both spouses/civil partners, "insured" means each of the spouses/civil partners. Each such spouse/civil partner is deemed to have provided the proceeds of the policy to the extent that such proceeds are applied in paying the relevant tax of that spouse/civil partner.

Where the proceeds of the policy are not applied in paying relevant tax, each spouse/civil partner is deemed to have provided the proceeds of the policy to the extent that they are comprised in an inheritance taken under a disposition made by that spouse/civil partner.

"qualifying insurance policy" means a policy of insurance—

- which is in a form approved by the Revenue Commissioners for the purposes of the section (see paragraph 15.4 of CAT TDM Part 15 Insurance Policies),
- in respect of which annual premiums are paid by the insured during his/her life, and
- which is expressly effected under the section for the purpose of paying relevant tax.

"relevant tax" means approved retirement fund tax and inheritance tax payable in respect of an inheritance but excluding, in the computation of such tax, an interest in a qualifying insurance policy taken—

- on the death of the insured,
- under a disposition made by the insured, where the inheritance is taken on or after the date of death of the insured and not later than one year after that death, or
- under a disposition made by the spouse of the insured, where the inheritance is taken only in the event of the insured not surviving the spouse by a period of up to 31 days.

The qualifying insurance policy must be—

- a policy of insurance within the meaning of ***paragraphs (a)***, ***(b)*** or ***(c)*** of the definition of the term "insured" in ***subsection (1)***, or

- a policy of insurance, where the insured is an individual and the proceeds of the policy are payable only on the contingency of the insured surviving that spouse/civil partner.

An interest in a qualifying insurance policy comprised in an inheritance taken under a disposition made by the insured will be exempted from tax in relation to that inheritance, and will not be taken into account in computing tax, to the extent that the proceeds of the policy are applied in paying relevant tax (as defined). **(2)(a)**

An interest in a qualifying insurance policy which is comprised in an inheritance taken under a disposition made by the insured will, to the extent that the proceeds of the policy are not applied in paying relevant tax, be deemed to be taken on a day immediately after— **(2)(b)**

- the date of the death of the insured, or

- the latest date (if any) on which an inheritance is taken in respect of which that relevant tax is payable,

whichever is the later.

For the purposes of the section, a credit is given for the approved retirement fund tax paid by the qualifying fund manager. This ensures that the requirement that must be satisfied in ***subsection (2)(a)*** in order to obtain the exemption (i.e. that the proceeds of a qualifying insurance policy are applied in paying relevant tax) can be met. **(2)(c)**

Examples of situations where the section applies:

Example 1

Andrew Byrne died leaving an estate which included €75,000, being the proceeds of a qualifying insurance policy, payable to his personal representatives. In his will, he bequeathed the proceeds of the policy to his executor on trust to pay the relevant tax (within the meaning of ***section 72***) arising on his death, any balance of the proceeds to fall into his residuary estate. He bequeathed his residuary estate equally absolutely to his son, Dermot Byrne, to Dermot's wife Evelyn and to Dermot's son Robert.

In the first instance, the inheritance tax due is calculated in respect of the estate ignoring the proceeds of the policy.

Dermot's tax liability is Nil,

Evelyn's tax liability is €20,000,

Robert's tax liability is €40,000.

Evelyn and Robert receive legacies of €20,000 and €40,000 respectively from the proceeds of the policy to pay their tax. Those amounts are not liable to inheritance tax. The balance (€15,000) of the proceeds of the policy goes equally to Dermot, Evelyn and Robert and is taxed as an inheritance of €5,000 taken by each of them on the day after Andrew's death.

Robert's tax on €5,000 is €1,000.

Dermot's tax on €5,000 is Nil, Evelyn's tax on €5,000 is €1,000.

Example 2

Michael Moran and his wife, Patricia, took out a qualifying insurance policy. The policy provided that the proceeds are to be payable, on the death of the survivor, to the personal representative of that survivor. Michael paid all the premiums during his life.

Michael died and, under the terms of his will, he left his entire estate to Patricia absolutely. Inheritance tax is not payable on the inheritance taken by Patricia (***section 71***). Patricia paid the premiums in respect of the policy after Michael's death. In her will, Patricia left all her property to her son, Henry. The policy can be used to pay the inheritance tax payable by Henry on Patricia's death.

Example 3

Edward Hanrahan took out a qualifying insurance policy during his life. In his will, he bequeathed his estate absolutely to his wife, Joan, but should she not survive him by 30 days, his estate was to pass absolutely to his son, Vincent. Edward and Joan were involved in a car accident. Edward died immediately and Joan died 10 days later. Vincent inherited Edward's estate absolutely under the terms of the will. The section ensures that the proceeds of a qualifying insurance policy, taken out by Edward during his life and payable on Joan's death, are available to pay Vincent's tax.

Example 4

William O'Connor left his estate to his niece, Catherine, for life, and, after her death, to her son, George, absolutely. The definition of "relevant tax" includes inheritance tax payable in this situation. If Catherine took out a qualifying insurance policy, the proceeds of that policy can be used to pay the inheritance tax arising on her death under the terms of William's will.

73 Relief in respect of certain policies of insurance relating to tax payable on gifts

Summary

This section grants exemption in respect of the proceeds of certain policies of insurance which are used to pay gift tax (or inheritance tax) arising in connection with a gift made by the insured. The minimum funding period is 8 years. An exception is made in relation to this period in the case of death or critical illness.

Details regarding the policies that qualify for exemption are set out in CAT TDM Part 15 Insurance Policies.

Details **(1)**

"appointed date" means—

- a date at least 8 years after the date on which the policy was taken out, or
- where the insured becomes critically ill or dies before that date, the date on which either event occurs;

"insured" means—

- an individual or
- in the case of a husband and wife/civil partners, one or both or the survivor of them;

"relevant insurance policy" means a policy—

- which is in a form approved by the Revenue Commissioners (see paragraph 15.4 of CAT TDM Part 15 Insurance Policies)
- in respect of which annual premiums are paid by the insured;
- which will run for at least 8 years; and
- which is expressly taken out under the section for the purpose of paying relevant tax;

"relevant tax" means gift tax or inheritance tax payable in connection with a lifetime disposition made by the insured, within one year of the proceeds becoming payable, but excluding gift tax or inheritance tax on an appointment out of a discretionary trust set up by the insured in his/her lifetime.

Where a donor makes a gift to a donee, the latter is liable to pay gift tax on the gift (this becomes inheritance tax if the donor dies within 2 years of making the gift). Under ***section 87***, if the donor pays the gift tax, the donee takes a further gift which is also liable to gift tax. Where the proceeds of a relevant insurance policy are used to pay gift tax on a gift made by the insured, the proceeds themselves, to the extent that they are used to pay the tax, will be exempt from tax and will not be taken into account when computing tax. **(2)**

Where the insured makes a gift of part or all of the proceeds of a relevant insurance policy, otherwise than in paying relevant tax, the proceeds will be subject to tax, unless the gift is to a spouse (exempt under ***section 70***) or to a charity (exempt under ***section 76***). **(3)**

The proceeds of a relevant insurance policy taken out to pay gift tax can be used to pay inheritance tax if the insured, or one of the insured in the case where annual premiums are paid by either spouse during their joint lives, and by the survivor of them during the life of such survivor, dies before 8 years have elapsed since the policy was taken out. The policy must, however, meet the same requirements under ***section 72*** which it would have had to meet if it had been taken out to pay inheritance tax. **(4)**

The proceeds of an insurance policy taken out for the payment of inheritance tax can also be used to pay gift tax where the proceeds of such a policy are used to pay the tax arising under a disposition made by the insured during his/her lifetime within 1 year after the appointed date. If an insured takes out a policy under ***section 72***, he/she can make a gift of property rather than leave it by will. Provided that 8 years have elapsed between the date the policy was taken out and the date of the gift and provided that the proceeds of the policy are used to pay the relevant tax within 1 year after the date of the gift, he/she can use the proceeds to pay gift tax and qualify for the exemption. **(5)**

Example

James Murphy takes out a policy that qualifies under ***section 72*** in 2003. He also made a will at that time leaving all his estate to beneficiaries named in his will. In 2012, he makes a gift of property to an individual who was not a person named in his will. He uses the proceeds of the policy to pay the tax in respect of the gift within 1 year of the making of the gift. The proceeds of the policy will qualify for exemption under ***section 73(5).***

74 Exemption of certain policies of assurance

<u>Summary</u>

This section exempts certain policies of life assurance from capital acquisitions tax where both the disponer and beneficiary are foreign-domiciled and foreign-resident. If the disponer had purchased the policy prior to 15 February 2001, the exemption will apply where the proper law of the disposition was foreign and the donee or successor is neither domiciled nor ordinarily resident in the State at the date of the gift or inheritance.

<u>Details</u>

"assurance company" has the meaning assigned to it by section 706 of the Taxes Consolidation Act 1997; **(1)**

"new policy" means (a) a policy of assurance on the life of any person issued, or (b) a contract within the meaning of Article 2(2)(b) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 entered into, on or after 1 January 2001 by an assurance company in the course of carrying on the business of life assurance.

"old policy" means a contract entered into by an assurance company in the course of carrying on a foreign life assurance business within the meaning of section 451 of the Taxes Consolidation Act 1997 and issued on or after 1 December 1992 and before 1 January 2001.

Any interest in a "new policy" or in an "old policy" comprised in a gift or inheritance will be exempt from tax where— **(2)**

- the disponer is neither domiciled nor ordinarily resident in the State at the date of the disposition, and

- the beneficiary is neither domiciled nor ordinarily resident in the State at the time the gift or inheritance is taken.

However, as respects policies purchased prior to 15 February 2001, which are taken by a foreign beneficiary as a gift or inheritance from an Irish disponer, the exemption will apply provided the proper law of the disposition was foreign. The "proper law" is the law governing the interpretation, construction or explanation of the words, intentions and presumptions of wills, deeds, contracts and other dispositions. **(3)**

75 Exemption of specified collective investment undertakings

Summary

This section exempts from capital acquisitions tax units of a Common Contractual Fund (CCF), units in an Investment Undertaking which qualify for the collective funds regime introduced by section 58 of the Finance Act 2000 and units in a Collective Investment Scheme, where the disponer and beneficiary are foreign-domiciled and foreign-resident.

If the disponer had purchased units of an Investment Undertaking prior to 15 February 2001, the exemption will apply where the proper law of the disposition was foreign and the donee or successor is neither domiciled nor ordinarily resident in the State.

Details

"collective investment scheme" means a *bona fide* scheme established solely or mainly to provide facilities for the participation by the public or other investors in profits or income arising from the acquisition, holding, management or disposal of securities or any other property; **(1)**

"common contractual fund" has the meaning assigned to it by section 739I of the Taxes Consolidation Act 1997;

"investment undertaking" has the meaning assigned to it in section 739B of the Taxes Consolidation Act 1997;

"investment limited partnership" has the meaning assigned to it by section 739J of the Taxes Consolidation Act 1997;

"unit", in relation to a collective investment scheme, includes shares, members' interests, limited partnership interests and any other instruments granting an entitlement to the income or investments from the scheme;

"unit", in relation to a common contractual fund, has the meaning assigned to it by section 739I of the Taxes Consolidation Act 1997;

"unit", in relation to an investment undertaking, has the meaning assigned to it by section 739B of the Taxes Consolidation Act 1997.

"unit", in relation to an investment limited partnership, has the meaning assigned to it by section 739J of the Taxes Consolidation Act 1997.

Units of a Collective Investment Scheme which is incorporated or otherwise formed under the law of a territory outside the State, an Investment Undertaking or a Common Contractual Fund, which are comprised in a gift or an inheritance, will be exempt from tax where— **(2)**

- the disponer is neither domiciled nor ordinarily resident in the State at the date of the disposition, and

- the beneficiary is neither domiciled nor ordinarily resident in the State at the time the gift or inheritance is taken.

However, as respects units of an Investment Undertaking purchased prior to 15 February 2001, which are taken by a foreign beneficiary as a gift or inheritance from an Irish disponer, the exemption will apply, provided the proper law of the disposition was foreign (see note on ***section 74(3)*** as regards the meaning of the term "proper law"). **(3)**

76 Provisions relating to charities, etc.

Summary

This section exempts gifts and inheritances taken for charitable purposes from tax. It also provides exemption for gifts and inheritances taken by the State and other public bodies and for any application of public funds.

Details

Public or charitable organisations, trustees, etc., are placed in the position of stranger-in- blood to the disponer. **(1)**

Exemption is granted to a gift or an inheritance which is taken for public or charitable purposes to the extent that the Revenue Commissioners are satisfied that it has been, or will be, applied to purposes which are regarded as public or charitable according to the law of the State. **(2)**

Exemption is granted to a gift or an inheritance which a person takes on becoming entitled to any benefit on the application to public or charitable purposes of property (including moneys provided by the Oireachtas or a local authority). However, the exemption does not apply where public moneys are applied for a person's benefit under a superannuation scheme which is administered by a public or charitable body. **(3)**

77 Exemption of heritage property

Summary

This section exempts from capital acquisitions tax houses and gardens and objects of national, scientific, historic or artistic interest subject to certain conditions.

Details

Exemption is granted to pictures, prints, books, manuscripts, works of art, jewelry, scientific collections and other things not held for trading which appear to the Revenue Commissioners to be of national, scientific, historic or artistic interest, which are kept permanently in the State (except for such temporary absences outside the State as are approved by the Revenue Commissioners) and in respect of which reasonable facilities for viewing are available to the public, recognised bodies or associations of persons. In general, the Revenue Commissioners will be guided by the views of experts in deciding whether the relevant items are of national, scientific, historic or artistic interest. Full details of any temporary absences of the objects to which the subsection applies should be furnished to the Revenue Commissioners in order that the matter can be considered by them. **(1)**

To qualify for the exemption, the objects referred to in ***subsection (1)*** must form part of the gift or inheritance both at the date of the gift or inheritance and at the valuation date. **(2)**

Heritage property appropriated by an executor in or towards satisfaction of a particular bequest qualifies for exemption, notwithstanding that it was not part of the bequest in question.

The exemption will be clawed back if an object is sold within 6 years after the valuation date and before the death of the donee or successor. However, the exemption will continue to apply if the sale of the object is a sale by private treaty to the Chester Beatty Library, the Crawford Art Gallery Cork, the Irish Museum of Modern Art, the National Archives, the National Concert Hall, the National Gallery of Ireland, the National Library of Ireland, the National Museum of Ireland, the Commissioners of Public Works in Ireland, the Irish Heritage Trust, any university in the State or any constituent college of that university, a local authority or the Friends of the National Collections of Ireland. **(3)**

The exemption will also be clawed back if at any time after the valuation date and— **(4)**

(a) before the sale of the object,

(b) before the death of the donee or successor, and

(c) before such object again forms part of the property comprised in a gift or inheritance (other than an inheritance to which the 1% charge imposed on certain discretionary trusts by ***section 20*** applies) where the subsequent donee or successor (not being the spouse/civil partner of the first-mentioned donee or successor) takes an absolute interest in the object,

there has been a breach of a condition relating to such object being kept permanently in the State (except for temporary absences outside the State which are approved by the Revenue Commissioners – see note on ***subsection (1)***) or in respect of facilities for viewing such objects).

Any work of art normally kept outside the State, which would not be charged to tax but for the fact that it is situated here on the relevant date, will be exempt from tax if brought into the State solely for public exhibition, cleaning or restoration. **(5)**

Subsections (2) to ***(4)*** will apply, subject to certain modifications, as they apply to the objects specified in ***subsection (1)***, to a house or garden that is situated in the State and is not held for the purpose of trading and— **(6)**

(a) which, on a claim being made to the Revenue Commissioners, appears to them to be of national, scientific, historic or artistic interest,

(b) in respect of which reasonable facilities for viewing were allowed to members of the public during the 3 years immediately before the date of the gift or inheritance, and

(c) in respect of which reasonable facilities for viewing are allowed to members of the public.

A claim for exemption will involve—

- an application to the Revenue Commissioners,
- an inventory of items in respect of which exemption is being claimed,
- a valuation of the items, and
- the grounds for the exemption, stating where the relevant items can be seen by the public and attaching any other relevant material in support of the claim e.g. advertisements.

The provision of facilities for viewing by members of the public of a house or garden is not regarded as reasonable unless full details of opening hours and admission prices have been notified to the National Tourism Development Authority (trading as Fáilte Ireland) before 1 January each year. The house or garden must be open to the public for at least 60 days (of which 40 days must be in the period from 1 May to 30 September) in order to obtain the exemption. Not less than 10 of the 40 days must fall on a Saturday or a Sunday. Reasonable access must be afforded to the house or garden and the price must be reasonable. **(7)**

78 Heritage property of companies

<u>Summary</u>

This section ensures that shares in a family-controlled private company are exempt from tax to the extent that their value is derived from heritage property that would qualify under ***section 77*** if the property was heritage property not owned by a company. The exemption will only apply where the heritage property is owned by the company on or before 12 April 1995.

Details

"relevant heritage property" means heritage property (including a house or garden) which would be exempt from tax if the heritage property itself (rather than shares in a company owning the heritage property) were comprised in the gift or inheritance; **(1)**

"private company" and "subsidiary" are self-explanatory.

Where a gift or inheritance consists of shares in a company, those shares will be entitled to exemption from tax to the extent that their value is derived from relevant heritage property. Where the heritage property is acquired by the company after 12 April 1995, the exemption will not apply. **(2)**

Company shares appropriated by an executor in or towards satisfaction of a particular bequest qualify for exemption, notwithstanding that they were not part of the bequest in question. **(3)**

Where part of a share is exempt under this section and the share itself qualifies for business relief, then the value attributable to the heritage property does not also qualify for business relief. **(4)**

A clawback will apply where the company share in question is sold within 6 years after the valuation date, and before the death of the donee or successor. **(5)**

A clawback will also apply where— **(6)**

- the heritage property is sold within 6 years after the valuation date and before the death of the donee or successor, or

- there has been a breach of the public access conditions prior to the death of the donee or successor, and prior to a sale (or another gift or inheritance to someone other than the spouse/civil partner of the donee or successor) of the company share or item of heritage property.

Notwithstanding ***subsections (5)*** and ***(6)***, the exemption will continue to apply if the sale of the share or the item of relevant heritage property (as the case may be) is a sale by private treaty to the Chester Beatty Library, the Crawford Art Gallery Cork, the Irish Museum of Modern Art, the National Archives, the National Concert Hall, the National Gallery of Ireland, the National Library of Ireland, the National Museum of Ireland, any university in the State or any constituent college of such university, a local authority or the Friends of the National Collections of Ireland. **(7)**

79 Exemption of certain inheritances taken by parents

This section exempts from inheritance tax an inheritance taken by a parent from a child on the death of that child where the child had taken a non-exempt gift or inheritance from either or both of his/her parents within the period of 5 years immediately prior to the death of the child.

80 Payments relating to retirement, etc.

Summary

This section exempts from capital acquisitions tax payments by way of retirement benefit, redundancy payments or pension paid by an employer to an employee although, in certain circumstances, excessive payments may be taxed.

The section also provides that benefits taken by persons other than the employee himself/herself, arising under a superannuation fund or scheme, are deemed to be taken from the employee, as disponer.

Details

"superannuation scheme" includes any arrangement in connection with employment for the provision of a benefit or in connection with the retirement or death of an employee; **(1)**

"employment" includes employment as a director of a body corporate (e.g. a company) and related words are construed accordingly.

Exemption is granted to bona fide retirement benefits, redundancy payments and pensions. This exemption is, however, subject to the provisions of ***subsection (3)***. **(2)**

The Revenue Commissioners can treat excessive "golden handshakes", etc. as partly taxable where the employer and employee are related or the employee "controls" the private company which is the employer (see note on ***section 27*** regarding "control"). If the payment is made under an approved scheme, it will not be taxable. **(3)**

A person who is aggrieved by a decision of the Revenue Commissioners not to grant the exemption has the right to appeal to the Appeal Commissioners, with a right of further appeal to the Courts. **(4)**

Annuities or lump sums arising in favour of persons other than the employee under a superannuation fund or scheme will be treated as coming, not from the employer, but from the employee. **(5)**

81 Exemption of certain securities

<u>Summary</u>

This section exempts from gift and inheritance tax gifts and inheritances of certain Government and other securities (including units in certain unit trusts) issued with a condition that they be exempt from tax when in the beneficial ownership of persons neither domiciled nor ordinarily resident in this country. In order to qualify for the exemption, the securities or units must be held by the disponer for 6 years prior to the date of the gift or inheritance (15 years where the securities were acquired on or after 24 February 2003), unless the disponer was neither domiciled nor ordinarily resident in this country at the date of the disposition, or the securities or units were owned by the disponer prior to 26 March 1997, or became subject to the disposition before that date, and the disponer was neither domiciled nor ordinarily resident in this country at the date of the gift or inheritance.

The securities or units must be comprised in the gift or inheritance at the date of the gift or inheritance and at the valuation date.

Where the securities or units were acquired prior to 15 February 2001, the period during which the securities or units must be held in order to qualify for the exemption is 3 years.

<u>Details</u>

"security" means any security, stock, share, debenture, debenture stock, certificate of charge or other form of security issued before, on, or after the passing of the Act and which by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment is exempt from tax when in the beneficial ownership of a person neither domiciled nor ordinarily resident in the State; **(1)**

"unit trust scheme" means an authorised unit trust scheme within the meaning of the Unit Trusts Act 1990, whose deed restricts the property subject to those trusts to securities.

Qualifying securities or units comprised in a gift or inheritance are exempt from capital acquisitions tax if it is shown that **(2)**

- the securities or units were comprised in the disposition (e.g. where they were held by a trust) continuously for a period of 6 years prior to the date of the gift or inheritance. [Where the securities or units were acquired on or after 24 February 2003, the relevant period is 15 years.] A period immediately before the date of the disposition during which the stock was in the beneficial ownership of the disponer is treated as part of the period during which it was comprised in the disposition, **(2)(a)**

- the securities or units must have been comprised in the gift or inheritance both at the date of the gift or inheritance and at the valuation date, and **(2)(b)**

- the donee or successor is, at the date of the gift or inheritance, neither domiciled nor ordinarily resident in the State. **(2)(c)**

Where in the administration of an estate, an exempt security or unit is appropriated in satisfaction of a benefit, the security or unit will be deemed, for the purposes of ***subsection (2)***, to be comprised in

the gift or inheritance at the date of the gift or inheritance, provided it formed part of the estate at the date of the gift or inheritance.

The requirement that the securities or units be comprised in the disposition for the 6 year period will not apply where the disponer was neither domiciled nor ordinarily resident in the State at the date of the disposition or, in the case of securities or units purchased before 26 March 1997, where the disponer was neither domiciled nor ordinarily resident in the State at the date of the gift or inheritance. **(3)**

Where the securities or units were acquired prior to 15 February 2001, the period during which the securities or units must be held in order to qualify for the exemption is 3 years rather than the normal 6 year or 15 year period. **(4)**

82 Exemption of certain receipts

Summary

This section grants exemption from capital acquisitions tax for compensation and damages, winnings from betting, lotteries, etc., certain payments in bankruptcy matters, certain normal and reasonable payments within the family, certain payments to incapacitated individuals and normal and reasonable payments from trusts towards the support, maintenance or education of minor orphaned children of the disponer.

Details

The following receipts are not regarded as gifts or inheritances: **(1)**

- bona fide compensation payments for any wrong or injury to a person, his/her property, reputation or means of livelihood; **(1)(a)**
- bona fide compensation payments for any wrong or injury resulting in the death of another person; **(1)(b)**

  It is not required that compensation or damages be awarded by a court. It is sufficient that the benefit be received by way of bona fide compensation or damages, whether awarded by a court or agreed by compromise.
- payments made to a relevant individual under the Magdalen Restorative Justice Ex-Gratia Scheme to which section 205A Taxes Consolidation Act 1997 applies; **(1)(ba)**
- any payment to which section 205B Taxes Consolidation Act 1997 applies, being a general payment or a work-related payment made to an individual applicant, or to the estate of a deceased individual applicant, under section 32(1)(a) or (c) of the Mother and Baby Institutions Payment Scheme Act 2023;
- any payment made under the COVID-19 Death in Service Ex-Gratia Scheme for Health Care Workers; **(1)(bb)**
- any payment made under the CervicalCheck non-disclosure ex-gratia Scheme; **(1)(bc)**
- any payment made under Phase 1 of the Stardust ex-gratia payment scheme; **(1)(bd)**
- bona fide winnings in money or money's worth from wagers, lotteries, etc; **(1)(c)**
- payments from the competition "Your Country, Your Call" launched by the President on 17 February 2010; **(1)(ca)**
- any benefit arising out of the discharge of a debt under a Debt Relief Notice or the discharge or reduction in the amount of a debt under a Debt Settlement Arrangement or a Personal Insolvency Arrangement other than by reason of payment of that debt **(1)(cb)**

- any benefit arising out of—

  (a) the payment to the Official Assignee in Bankruptcy of money which has been provided by, or which represents property provided by, friends of a bankrupt, or **(1)(d)**

  (b) a remission or abatement of debts by the creditors of a bankrupt to fulfil an offer of composition after bankruptcy in accordance with section 39 of the Bankruptcy Act 1988;

- any money or property provided by friends of an arranging debtor or a remission or abatement of debts by creditors of an arranging debtor to enable the debtor to fulfil the terms of a proposal made by the debtor in accordance with section 87 of the Bankruptcy Act 1988. **(1)(e)**

The receipt of a payment made during the lifetime of a disponer for the benefit of a dependent which could reasonably be described as normal maintenance and education expenses is not a gift or inheritance. The payments which come within the scope of this subsection are payments which are part of the normal expenditure of the disponer and are reasonable having regard to that disponer's financial circumstances generally. Post FA 2014 the recipients covered are— **(2)**

- a minor child of the disponer or of the civil partner of the disponer, or
- a child of the disponer, or of the civil partner of the disponer, who is more than 18 years of age but not more than 25 years of age and is receiving full-time education or instruction at any university, college, school or other educational establishment, or who, regardless of age, is permanently incapacitated by reason of physical or mental infirmity from maintaining himself or herself, or
- a person to whom the disponer ~~is~~ stands *in loco parentis,* for support, maintenance, or education, or
- a dependent relative under section 466 of the Taxes Consolidation Act 1997 (this covers a relative of the disponer, or of his/her spouse/civil partner, who is incapacitated by old age or infirmity, or the widowed mother or widowed father/surviving civil partner of the disponer, or of his/her spouse/civil partner whether incapacitated or not, whose total income does not exceed a specified amount and who is maintained at his/her own expense by the disponer).

The receipt by a permanently incapacitated individual of funds which are held on a qualifying trust (within the meaning of section 189A Taxes Consolidation Act 1997), or of income deriving from funds held on such a trust, is not subject to capital acquisitions tax. **(3)**

A qualifying trust is a trust which has been established by deed:

- exclusively for the benefit of one or more named incapacitated individuals;
- where the trustees hold the trust funds for the benefit of the named incapacitated individual or individuals;
- where, in the event of the death of the named incapacitated individual or individuals, the undistributed part of the trust funds are to be applied for charitable purposes.

The receipt by a minor child of the disponer or of the civil partner of the disponer or also, post FA 2014, by a child of the disponer or child of the civil partner of the disponer up to the age of 25 if in full-time education or who, regardless of age, is permanently incapacitated by reason of physical or mental infirmity of money or money's worth for support, maintenance or education from a deceased parent/civil partner, where the other parent/civil partner is also deceased, will not be regarded as a gift or inheritance on condition that: **(4)**

- the provision of support, maintenance or education is such as would be part of the normal expenditure of a person in the circumstances of the parent/civil partner prior to his/her death, and

- is reasonable having regard to the financial circumstances of the parent/civil partner prior to his/her death.

83 Exemption where disposition was made by the donee or successor

Summary

Where a donee or successor takes a gift or inheritance under a disposition made by himself/herself, no charge to tax will arise. This principle also applies to holding companies and their subsidiaries.

Details

"company" means a body corporate (wherever incorporated) other than a private company within the meaning of ***section 27***. **(1)**

A gift or an inheritance taken by a donee or successor under a disposition made by that donee or successor is exempt from capital acquisitions tax. **(2)**

Where, at the date of the gift, 2 companies are associated in the manner described in ***subsection (4)***, a gift taken by one of them under a disposition made by the other will be exempt from capital acquisitions tax. **(3)**

2 companies will be regarded as associated for the purposes of ***subsection (3)*** if: **(4)**

- one company would be beneficially entitled to not less than 90% of any assets of the other company available for distribution to the owners of its shares and entitlements of the kind referred to in ***section 43(2)*** on a winding up, or

- a third company would be beneficially entitled to not less than 90% of the assets available for distribution and belonging to each of the other 2 companies concerned.

84 Exemption relating to qualifying expenses of incapacitated persons

Summary

This section provides exemption from capital acquisitions tax for gifts and inheritances taken exclusively for the purpose of discharging the medical expenses and associated maintenance costs of a permanently incapacitated individual.

Details

"qualifying expenses" is defined as expenses relating to medical care, including the cost of maintenance in connection with such medical care. **(1)**

A gift or an inheritance which is taken exclusively for the purpose of discharging qualifying expenses of an individual who is permanently incapacitated by reason of physical or mental infirmity is exempt from tax. The exemption applies to the extent that the Revenue Commissioners are satisfied that it has been or will be applied to such purpose. The entitlement to exemption will depend on the facts and circumstances of each case. **(2)**

85 Exemption relating to retirement benefits

Summary

This section exempts from inheritance tax any balance in an "approved retirement fund" or in a "Personal Retirement Savings Account" or in a "vested RAC" (retirement annuity contract) or in a vested PEPP (Pan European Pension Product) which passes on the death of a pensioner, or on the death of a predeceased pensioner's spouse/civil partner, to a child of his/hers who is over the age of 21 years where that balance is liable to income tax.

For information on an approved retirement fund, a Personal Retirement Savings Account or a Pan European Pension Product please refer to Notes for Guidance on Taxes Consolidation Act 1997 Part 30.

Details

The purpose of this section is to ensure that any balance in an "approved retirement fund", a vested "Personal Retirement Savings Account", a "vested RAC" or a vested Pan European Pension Product (PEPP) which passes on the death of the pensioner will be exempt from capital acquisitions tax if inherited by a child of the pensioner who is over 21 years of age at that time. Where the fund is inherited by the spouse/civil partner of the pensioner and held by the surviving spouse/civil partner in an approved fund, any balance in the fund which is inherited by a child of the surviving spouse/civil partner on the subsequent death of the surviving spouse/civil partner will also, under this section, be exempt from capital acquisitions tax if the child is over 21 years at that time. Where the child is under 21 years of age when he/she inherits the fund, capital acquisitions tax will be payable under the normal rules and subject to existing thresholds. **(1), (2)**

Any balance in the fund passing on death, or passing following the death of a surviving spouse or civil partner where the fund had previously passed to an approved fund held by that spouse or civil partner, to children of the disponer over 21 years of age will be subject to income tax under Case IV of Schedule D at 30%.

86 Exemption relating to certain dwellings

Summary

This section provides that an inheritance of a dwelling-house taken on or after 25 December 2016, will be exempt from capital acquisitions tax provided the following conditions are complied with:

- the bequeathed dwelling house is the principle private residence of the disponer at the date of his or her death.

- the recipient must have occupied the dwelling-house continuously as his/her only or main residence for a period of 3 years prior to the date of the inheritance. Where the dwelling-house has directly or indirectly replaced other property, this condition may be satisfied where the recipient has continuously occupied both properties as his/her only or main residence for a total period of 3 out of the 4 years immediately prior to the date of the inheritance;

- the recipient must not, at the date of the inheritance, or at the valuation date if later than the date of the inheritance, be beneficially entitled to any other dwelling-house or to any interest in any other dwelling- house; and

- the recipient must continue, except where such recipient was aged 65 years at the date of the inheritance or has died, to occupy that dwelling-house as his/her only or main residence for a period of 6 years commencing on the date of the gift or inheritance i.e. the relevant period.

A gift of a dwelling house taken on or after 25 December 2016 will be treated as an inheritance for the purposes of this section provided that gift is made to a dependent relative. A dependent relative is a direct relative of the donor, or of the donor's spouse or civil partner, who is permanently and totally incapacitated because of physical or mental infirmity from maintaining himself or herself or who is over the age of 65. Where a gift or a bequest of a dwelling house is made to a dependent relative, that dwelling house does not need to be the principal private residence of the disponer.

Where a disponer is absent from their principal private residence at the date of his or her death as a result of mental or physical ill health, they are deemed to have occupied their principal private residence at that time. Similarly, if a beneficiary ceases to occupy the dwelling house during the relevant period as a result of his or her mental or physical ill health which is certified, or as a result of a condition being imposed by an employer on a recipient to reside elsewhere, then the exemption will not be withdrawn.

The exemption will be withdrawn where the recipient sells or otherwise disposes of the dwelling-house within the relevant period, unless the recipient was aged 65 years or over at the date of the gift or inheritance.

However, where the recipient sells or disposes of the dwelling-house and invests some or all of the proceeds in a replacement dwelling-house and continuously occupies both for a total period of 6 out of the 7 years commencing on the date of the gift or inheritance, the clawback will be limited to the extent of the proceeds of the sale or disposal not invested in the replacement dwelling-house.

Details

"dwelling-house" is defined as a building or part of a building which is or was habitable together with a curtilage of up to 0.4047 hectares. Where the curtilage exceeds 0.4047 hectares then the part that is included is the part that would be most suitable for occupation and enjoyment with the dwelling house **(1)**

"relevant period" is defined as the period of 6 years immediately subsequent to an inheritance of a relevant dwelling house.

The usual meaning of "successor" is expanded to include the meaning of a "transferee" under subsection (2) of section 32 i.e. a person who has inherited due to the early termination of a life interest.

A bequeathed dwelling house will be considered a "relevant dwelling house" and will qualify for the exemption provided both of the following conditions are met: **(2)**

- the dwelling house was the principal private residence of the disponer at the date of his or her death and **(2)(a)**

- the dwelling house was continuously occupied by the successor as his or her principal private residence for three years immediately preceding the date of the inheritance. The successor is allowed to have changed his or her principal private residence throughout this three-year period provided that, when taken together, the combined period of occupation of both dwellings is three of the four years immediately preceding the date of the inheritance. **(2)(c)**

For the purposes of subsection (4A), where a successor claims the dwelling house exemption they will be deemed to be beneficially entitled to or to have a beneficial interest in, a dwelling house that is subject to a discretionary trust, where that property has been placed in a discretionary trust which the successor established and of which they are a beneficiary. **(2A)**

The occupancy requirements on the disponer and the successor at the date of the disponer's death or at the date of the inheritance, respectively, set out in subsection (2), will be deemed to be met where the disponer or the beneficiary has ceased to occupy the dwelling house due to his or her mental or physical ill health. **(3)**

A "relevant dwelling house" is exempt from inheritance tax when inherited by a successor and the value of the dwelling house is excluded when determining the tax due on any subsequent gifts and inheritances taken by the same successor. This exemption from inheritance tax is contingent on subsections (4A), (4B), (5) and (6). **(4)**

For the purpose of subsection (4) and in relation to a disponer and a successor a dwelling house will not be regarded as a "relevant dwelling house" where: **(4A)**

- the successor already holds a beneficial interest in another dwelling house at the date of the inheritance or **(4A)(a)(i)**

- the successor holds an interest in another dwelling house inherited from the same disponer on the valuation date. **(4A)(a)(ii)**

A successor who has already qualified for an exemption in respect of an inherited dwelling house will cease to qualify for that exemption if he or she inherits another dwelling house from the estate of the same disponer on the date on which the subsequent interest is acquired. **(4A)(b)**

Where there is a cessation of relief as a result of subsection 4(A)(b), then tax is chargeable, and the value of the previously exempt dwelling house will be taken into account when aggregating prior benefits. In addition, the due date from which interest is to be charged is adjusted so that the "relevant date", as defined in subsection 46(5), is the earliest valuation date for any other dwelling house in which the **(4B)**

successor took a beneficial interest if this date is later than the relevant date of the previously exempt dwelling house.

A dwelling house will not be regarded as a "relevant dwelling house" where **(5)**

- the dwelling house has been gifted, or **(5)(a)**
- the dwelling house is a gift that has become an inheritance as a result of a disponer dying within two years of making the gift, as set out in subsection (1) of section 3 **(5)(b)**

other than where it is taken by a "dependent relative" as defined in subsection (9).

Subject to subsection (7) a dwelling house shall cease to be regarded as a "relevant dwelling house" where: **(6)**

- the dwelling house is sold or otherwise disposed of, either wholly or in part, during the six-year period subsequent to the inheritance and before the death of the successor, or **(6)(a)**
- the successor ceases to occupy the dwelling house as his or her principal private residence. **(6)(b)**

In the event of either of these occurrences, tax becomes chargeable on the inheritance of the dwelling house by the successor as if that dwelling house had not been a "relevant dwelling house" at the date of the inheritance and the value of the dwelling house is brought back into the determination of tax due on any subsequent gifts and inheritances by the same successor.

A clawback of the exemption under subsection (6) will not arise where: **(7)(a)**

- the proceeds of the sale or disposal of the dwelling house are used by the successor to acquire a replacement house that is used as the successor's principal private residence, provided that the combined periods of occupation of the original dwelling house and the replacement dwelling house account for at least six of the seven years after the date of the inheritance,
- the successor is of the age of 65 years or over at the date of the inheritance,
- the successor ceases to occupy the dwelling house as a result of mental or physical ill health that is certified by a registered medical practitioner, or
- the successor is required by his or her employer to be absent from the dwelling house to perform the duties of his or her employment.

The permitted absences from a dwelling house by a successor set out in subparagraph (7)(a) pertaining to ill health or work related absences also apply to the same absences by a successor from a replacement dwelling house. **(7)(b)**

Where the proceeds of a sale or disposal of a dwelling house within the relevant period exceed the consideration paid for the replacement dwelling house, the value of the sold dwelling house that becomes chargeable to tax is reduced proportionally so that tax becomes payable only on the proportional amount that is not re-invested. **(8)**

"relative" is defined in relation to the disponer or the spouse or civil partner of the disponer as a lineal ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, or niece. **(9)(a)**

"dependent relative" is defined as a relative who is permanently and totally incapacitated from maintaining himself or herself due to mental or physical infirmity or who is of the age of 65 years or over.

The taking of a gift of a dwelling house by a dependent relative is deemed to be the taking of an inheritance of the dwelling house on the date of the gift. **(9)(b)**

Where a dependent relative takes a gift or an inheritance of a dwelling house, the requirement set out in paragraph (a) of subsection (2) in relation to the occupancy of the dwelling house as the disponer's principal private residence is not applicable. **(9)(c)**

87 Exemption of certain benefits

This section provides that where a gift or inheritance is taken by direction of the disponer free of tax, the benefit taken is deemed to include the amount of tax chargeable on the gift or inheritance, but not the amount of tax chargeable on such tax.

Example
B receives a gift from A free of tax. The tax on the gift is €20,000. The benefit is deemed to consist of the benefit and the amount of tax chargeable on that benefit.

88 Exemption of certain transfers from capital acquisitions tax following dissolution of marriage or civil partnership

Summary

This section grants exemption from capital acquisitions tax in respect of certain transfers of property between persons under the Family Law Act 1995, the Family Law (Divorce) Act 1996 and Civil Partnership and Certain Rights and Cohabitants Act 2010 and similar transfers made outside the State under legislation analogous to those Acts.

Details

The section exempts all transfers of property from one person to the other from gift tax and inheritance tax where those persons have separated or divorced or where a civil partnership has been dissolved and the transfer is made pursuant to certain court orders. **(1)**

The court orders to which the section applies are as follows: **(2)**

- a relief order or an order under section 25 of the Family Law Act 1995 and A maintenance pending relief order (these are orders relating to payments for the maintenance of dependents, etc. which are made by an Irish court following a legal separation or the dissolution of a marriage, as the case may be in a jurisdiction outside the State, **(2)(a)(b)**

- an order referred to in section 41(a) of the Family Law Act 1995 (section 41 deals with maintenance orders for a spouse and children), or an order under section 42(1) of that Act (section 42 deals with lump sum maintenance orders for a spouse and children) made in addition to or instead of an order under section 41(a) of that Act, in favour of a spouse whose marriage has been dissolved, **(2)(c)**

- an order under Part III of the Family Law (Divorce) Act 1996 (which deals with preliminary and ancillary orders after proceedings for divorce), **(2)(d)**

- an order under Part 12 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, and **(2)(e)**

- analogous orders, made on or after 10 February 2000, by a foreign court consequent on a foreign divorce which is recognised as valid by the Irish Courts. **(2)(f)**

88A Certain transfers by qualified cohabitants

This section exempts transfers made by a qualified cohabitant to another qualified cohabitant under Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. These orders relate to the transfer of property, maintenance payments, etc.

Qualified cohabitants are former cohabitants who have been in a relationship with another person for a minimum period of 5 years (2 years where they are parents of one or more dependent children), whose relationship has ended by death or separation and neither of whom was married to and living with another person in 4 of the 5 years immediately before the relationship ended.