Exemptions from CAT

Part 23

This document should be read in conjunction with Part 9 of the Capital Acquisitions Tax Consolidation Act 2003

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Introduction

CATCA 2003 Part 9 provides a number of exemptions from CAT depending on the relationship between the parties and on the nature of the benefits being provided. The exemptions are summarised below and include details of FA 2014 amendments.

1. Exemption of small gifts

CATCA 2003 s.69 provides an exemption for gifts of up to €3,000 taken by a donee from any disponer in a calendar year. Any gifts within this limit are not taken into account in computing tax and are not included in any future aggregation. Where a gift exceeds this limit only the excess will be taken into account for the purposes of calculating CAT. This small gift exemption applies only to gifts and not to inheritances.

Example

Tom makes a cash gift of €30,000 to his granddaughter Joan in 2013. Tom has made no other gifts to Joan in 2013.

The taxable value of the gift taken by Joan is €27,000 after the small gift exemption of €3,000 is deducted.

2. Exemption for Spouses and Civil Partners

CATCA 2003 s.70 and s.71 provide that any gift or inheritance taken between spouses or between civil partners under the Civil Partnership Act is exempt from CAT. There is no value limit to the exemptions for spouses and civil partners.

Example

John makes a gift of €10,000,000 to his spouse Helen in 2013.
The gift is completely exempt from CAT.

3. Exemption for certain Policies of Insurance

CATCA 2003 s.72 and s.73 provide that the proceeds of life insurance policies, taken out expressly to pay inheritance tax, approved retirement fund tax and gift tax are exempt from tax provided certain conditions are fulfilled. For the inheritance tax exemption to apply, the main condition is that the inheritance must be taken on or after the death of the insured and not later than one year after the death of the insured.
The main condition for the exemption from gift tax to apply is that the proceeds from the policy must be payable on a date which is more than eight years from the date the policy is effected.

Example

Andrew died in 2013, leaving a net estate of €300,000, not including €90,000 the proceeds of a section 72 policy payable to his personal representatives. By his will, Andrew bequeaths the proceeds of the policy to his executor on trust to pay inheritance tax arising on his death, any balance of the proceeds to fall into his residuary estate. He bequeaths his residuary estate equally to his son Dermot, to Dermot's wife Evelyn and to Dermot's son Robert.

In the first instance, the inheritance tax is assessed ignoring the proceeds of the policy. Dermot, Evelyn and Robert each receive €100,000.
Dermot's tax on €100,000 is Nil (below the Group A threshold of €225,000).
Evelyn's tax on €100,000 is €27,000.
Robert's tax on €100,000 is €22,000.

Evelyn and Robert receive legacies of €27,000 and €22,000 respectively from the proceeds of the policy to pay their tax. Those amounts are not liable to inheritance tax. The balance of €41,000 of the proceeds of the policy goes equally to Dermot, Evelyn and Robert and is taxed as an inheritance of €13,666 taken by each of them on the day after Andrew's death.

Dermot's additional tax is Nil (Dermot's benefits are still below his Group A tax-free threshold of €225,000).

Evelyn's additional tax is €4,510 (€13,666 x 33%)
Robert's additional tax is €4,510 (€13,666 x 33%)

4. Exemption of certain Policies of Assurance

CATCA 2003 s.74 provides an exemption from tax for certain policies of assurance on the life of a person where neither the disponer nor the donee or successor is domiciled or ordinarily resident in the State.
S. 88 of FA 2013 extended the exemption from tax to policies known as Capital Redemption Policies issued by life assurance companies where the disponer is, at the date of disposition, neither domiciled nor ordinarily resident in the State and the donee or successor is neither domiciled nor ordinarily resident in the State at the date of gift or at the date of death, respectively.
Capital Redemption Policies are a specific type of life assurance where there is no actual life assured under the assurance contract, but the policy is of a type that is in practice regarded as part of life assurance business.

5. Exemption of certain Investment Entities

CATCA 2003 s.75 provides an exemption from tax for gifts and inheritances of Units of certain investment entities. Units held in collective investment schemes, common contractual funds, investment limited partnerships or investment undertakings are exempt from tax in cases where neither the disponer nor the donee or successor is domiciled or ordinarily resident in the State.

S. 89 of FA 2013 provides that an existing exemption on the transfer of units in an investment limited partnership in cases where neither the disponer nor the donee or successor are domiciled or ordinarily resident in the State will continue following the removal of investment limited partnerships from the definition of "investment undertaking" in section 739B(1) of the TCA 1997.

6. Exemption for Charities

CATCA 2003 s.76 provides that any gift or inheritance taken for public or charitable purposes is exempt from tax and is not taken into account in computing tax to the extent that the Commissioners are satisfied that it has been, or will be, applied to purposes which, in accordance with the law of the State, are public or charitable.

Example

A legacy left to an orphanage in Mexico or a legacy left to a charity in the U.K. would both be exempt from tax.

7. Exemption of Heritage Property

CATCA 2003 s.77 and s.78 exempts from CAT gifts and inheritances of pictures, prints, books, manuscripts, works of art, jewellery, scientific collections or other things not held for the purposes of trading where the following conditions are satisfied:

(1) the property is of national, scientific, historic or artistic interest;
(2) the property is kept permanently in the State; and
(3) reasonable facilities for viewing are allowed to members of the public or to recognised bodies or to associations of persons.

A specific claim must be made to Revenue for this exemption.

This exemption also applies to houses and gardens situate in the State not held for the purposes of trading in respect of which:

(1) reasonable facilities for viewing were allowed to the public during the three year period prior to the date of the gift or inheritance; and
(2) in respect of which reasonable facilities for viewing are allowed to the public following the gift or inheritance.

Where heritage property that would qualify for the exemption in CATCA 2003 s.77 has been held through a family controlled company (within the meaning of CATCA 2003 s. 27) any gift or inheritance of the shares in that company will qualify for exemption from CAT to the extent that the value of the shares relates to the heritage property.

8. Exemption of certain Inheritances taken by parents

CATCA 2003 s. 79 provides that any inheritance taken by a parent of the disponer is exempt from CAT if that disponer took a non-exempt gift or inheritance from either or both of that disponers parents within the five-year period prior to the death of the disponer. It is not necessary that the inheritance be of the same property or of the same value as the prior gift or inheritance.

Example

On the death of his son Tony in 2013, Noel, his father, inherits property worth €5,000,000 from Tony.

In 2010, Noel had gifted his son Tony €20,000 in cash to help Tony start up a business.

The inheritance taken by Noel is completely exempt from Inheritance tax

9. Exemption for Payments relating to Retirement

CATCA 2003 s. 80 provides that any retirement benefit, redundancy payment or pension paid to an employee or a former employee out of funds provided by the employer is not a gift or inheritance for the purposes of the CATCA 2003.

10. Exemption of certain Securities

CATCA 2003 S 81 provides that a gift or inheritance of certain securities is exempt from CAT provided they have been issued on the condition that they are exempt from CAT when in the beneficial ownership of a person who is not domiciled nor ordinarily resident in the State.

11. Exemption of certain Receipts

CATCA 2003 s. 82 as amended by s. 81 FA 2014 provides that certain receipts are not gifts or inheritances. The exempted receipts include:

- compensation or damages received by a person for any wrong or injury suffered by that person in their person, property, reputation or means of livelihood,

- compensation or damages received by a person for any wrong or injury resulting in the death of any other person;

- winnings from betting or from lotteries etc.

- property provided by friends of a bankrupt person or an arranging debtor to the Official Assignee in Bankruptcy or a remission or abatement of debts by creditors of a bankrupt or arranging debtor to enable the bankrupt to fulfil an offer of composition or a proposal made by a debtor in accordance with Bankruptcy Act 1988 s. 39 or s. 87;

- FA 2013 s. 100 provides that any benefit arising out of the discharge of a debt under a Debt Relief Notice or arising out of 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 is not a gift or inheritance;

- receipts taken by certain relatives of the disponer, while the disponer is alive, for support, maintenance, or education purposes may be exempt from CAT. The payments made by the disponer must be regarded as part of the normal expenditure of a person in the circumstances of the disponer and must be reasonable having regard to the financial circumstances of the disponer.

S. 81 FA 2014 amended CATCA 2003 S 82(2), as regards receipts taken by children, to **confine the relief** to:

(i) a minor child of the disponer, or a minor child of the civil partner of the disponer, or
(ii) a child of the disponer, or a child of the civil partner of the disponer, who is older than 18 years but not older than 25 years and who is receiving full-time education at any university, college, school or other educational establishment, or
(iii) a child of the disponer of any age who is permanently incapacitated by reason of physical or mental infirmity form maintaining himself or herself.

It also **extended the relief** to orphaned children under Section 82(4) subject to the same qualifying age requirements - prior to FA 2014, relief under subsection (4) was confined to orphans who were minors.

Full details of the Finance Act 2014 amendments in relation to this relief can be found on Revenue's **Guide to the CAT Treatment of Receipts by Children from their Parents for their Support, Maintenance or Education.**

- ex-gratia payments made to an individual or to the estate of a deceased individual by the Minister for Justice, Equality and Defence pursuant to the Magdalene Commission Report in respect of women who were admitted to and worked in Magdalene Laundries (Section 77(2), Finance (No 2) Act 2013). It should be noted however that on the subsequent distribution of that individual's estate any benefits made to the beneficiaries of the estate are considered to be inheritances for the purpose of the Capital Acquisition Tax Consolidation Act, 2003.

12. Exemption where Disposition was made by the donee or successor

CATCA 2003 s. 83 provides that CAT is not chargeable on a gift or inheritance taken by a donee or successor under a disposition made by that donee or successor. A person cannot take a gift or inheritance from himself.

Example

George sets up a discretionary trust in 2012 and he transfers €2,000,000 into the trust. George nominates himself, his spouse and his children and grandchildren as the beneficiaries of the trust.

In 2013 the trustees of the trust appoint out €1,000,000 from the trust to George.

The payment to George is exempt from tax because it is a benefit taken by George from himself.

13. Exemption relating to qualifying expenses of incapacitated persons

CATCA 2003 s. 84 provides that gifts or inheritances taken exclusively for the purposes of discharging the "qualifying" expenses of an individual who is permanently incapacitated by reason of physical or mental infirmity are exempt from tax

See Part 22 of this Manual for full details.

14. Exemption relating to retirement benefits

CATCA 2003 s. 85 provides an Inheritance tax exemption, in certain circumstances, on inheritances taken by a child over the age of 21 from an approved retirement fund or from an approved minimum retirement fund. FA 2013 s. 90 extends the

Inheritance tax exemption to similar inheritances from a vested Personal Retirement Savings Account.

15. Exemption relating to certain dwellings

CATCA 2003 s. 86 provides an exemption from CAT for inheritances of dwelling houses in certain circumstances. In order for this exemption to apply, all of the following conditions must be complied with:

(1) the dwelling house must be the principal private residence of the disponer at the date of his or her death;

(2) the dwelling house must have been continuously occupied by the beneficiary as his or her only or main residence for a period of three years before the date of the inheritance;

(3) the beneficiary must not be entitled to an interest in any other dwelling house at the date of the inheritance; and

(4) the beneficiary must continue to occupy the dwelling house as his or her only or main residence for a period of six years after the date of the inheritance.

Gifts of dwelling houses to dependent relatives of a donor may also qualify for the exemption in certain circumstances. 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 of a dwelling house qualifies for the exemption, the dwelling house does not have to have been the principal private residence of the donor.

See Part 24 of this manual for a more detailed description of the dwelling house exemption.

16. Exemption of certain benefits

CATCA 2003 s. 87 provides that, where a disponer makes a direction that a particular gift or inheritance should be taken by a beneficiary free from tax, then the benefit is deemed to include the amount of the tax payable on that benefit.

Example

In March 2012, Paul gifts Michelle a sum of €100,000 free from tax. The tax on the €100,000 is €30,000. Accordingly, the total taxable gift taken by Michelle is €130,000. The total gift tax payable by Michelle is €39,000 (€130,000 x 30%).

17. Exemption of certain transfers from CAT following dissolution of marriage or civil partnership

CAT does not apply to a property transfer, ordered by a court, between separated or divorced marriage partners.