

# 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 7: Payment and Recovery of 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 (No.2) Act 2023.

## Table of Contents

<b>PART 7 PAYMENT AND RECOVERY OF TAX, INTEREST AND PENALTIES .....</b>	<b>3</b>
<i>Overview .....</i>	<i>3</i>
<i>51 Payment of tax and interest on tax.....</i>	<i>3</i>
<i>52 Set-off of gift tax paid in respect of an inheritance .....</i>	<i>5</i>
<i>53A Surcharge for late returns.....</i>	<i>6</i>
<i>55 Payment of tax on certain assets by instalments.....</i>	<i>8</i>
<i>60 Tax to be a charge.....</i>	<i>15</i>
<i>61 Receipts and certificates.....</i>	<i>15</i>

## PART 7 PAYMENT AND RECOVERY OF TAX, INTEREST AND PENALTIES

### *Overview*

This Part contains provisions relating to the payment of tax and the charging of interest on overdue tax and the imposition of penalties for failure to deliver a return.

The tax may be paid by instalments in certain cases and subject to certain conditions. Tax on inheritances may be paid by means of surrender of certain Government securities comprised in the inheritance.

Provision is made to repay interest on tax or interest overpaid and for the postponement, remission and compounding of tax in certain cases.

### *51 Payment of tax and interest on tax*

#### Summary

This section contains provisions relating to the payment of tax and the charging of interest on overdue tax. The tax is due on the valuation date and simple interest, at the rate or rates set out in Part I of the Table in **subsection (2)** (inserted by section 145 of the Finance Act 2005) runs from that date until the date of payment. If, however, tax is paid on or before 31 October in the relevant year, no interest will be payable. If tax assessed by the Revenue Commissioners is paid within 30 days of the assessment, interest will not be charged for that period. In the case of gifts which become inheritances by reason of the death of the donor within 2 years of the date of the gift, interest runs from the date of death.

A payment may be made on account of tax due, whether in advance of an assessment or subsequent to an assessment. Any payment is applied, in the first instance, against interest which may have accrued and the balance is applied against tax.

#### Details

Tax is due and payable on the valuation date. (1)

Simple interest is payable, without deduction of income tax, on the tax arising by reason of section 15(1) or 20(1) from the valuation date to the date of payment of that tax, and the amount of that interest shall be determined in accordance with paragraph (c) of subsection (2). (1A)

---

Simple interest is payable, without deduction of income tax, on the tax where the relevant date occurs — (2)(a)

- (i) in the period from 1 January to 31 August in any year, from 1 November in that year to the date of payment of that tax, and
- (ii) in the period 1 September to 31 December in any year, from 1 November in the following year to the date of payment of that tax.

The amount of that interest is determined in accordance with **paragraph (c)**

Interest payable in accordance with **paragraph (a)** is chargeable and recoverable as if it were part of the tax. (2)(b)

The following definitions apply for the purposes of **subsection (2)(c)**: **(2)(c)(i)**

“period of delay” defines the period for which interest is payable on unpaid tax;

“relevant period” is designed to divide up any period of delay whose duration covers a period during which more than one rate of interest applies. The overall period of delay is to be divided up into the various periods (i.e. the relevant periods) applicable to any particular rate of interest. The interest due is then calculated in respect of each interest rate in accordance with the formula in **subparagraph (ii)**. The interest due for each relevant period is then aggregated to give the full interest payable in respect of any given period of delay;

“Table” means the Table to the subsection.

Provision is made for calculating interest where the period of delay falls wholly into only one of the periods **(2)(c)(ii)** specified in Part 1 of the Table. Provision is also made where the period of delay straddles more than one of the periods specified in Part 1 of the Table. Part 1 of the Table sets out the normal interest rate to be charged on unpaid tax. Part 2 of the Table sets out the reduced rates of interest to be paid on unpaid tax in respect of certain agricultural property and business property which is being paid in instalments under **section 55**.

The provisions of **subsection (2)** are amended where interest is to be calculated in respect of unpaid tax to which the provisions of **section 55** apply. [**Section 55** provides for the payment of tax in respect of certain agricultural property and business property by way of instalments and, where tax is paid under that section, interest will be payable, in accordance with Part 2 of the Table, at 75% of the normal rate.] **(2A)**

Interest is not payable on the tax— **(3)**

to the extent to which **section 89(4)(a)** applies (i.e. the agricultural relief clawback), for the duration of the period from the valuation date to the date the agricultural relief ceases to apply, **(3)(a)**

to the extent to which **section 77(3)** and **(4)** applies (i.e. the heritage property exemption clawback), for the duration of the period from the valuation date to the date the exemption ceases to apply, **(3)(b)**

to the extent to which **section 101(2)** applies (i.e. the business property relief clawback), for the duration of the period from the valuation date to the date of the reduction which would otherwise fall to be made under **section 92** ceases to be applicable, **(3)(c)**

to the extent to which **section 78(6)** applies (i.e. the company heritage property exemption clawback), for the duration of the period from the valuation date to the date the exemption ceases to apply, **(3)(d)**

to the extent to which **section 86(6)** or **(7)** applies (i.e. the clawback of the exemption relating to certain dwellings), for the duration of the period from the valuation date to the date the exemption ceases to apply, **(3)(e)**

to the extent to which **section 102A(2)** applies, for the duration of the period from the valuation date to the date the development land is disposed of. **(3)(f)**

Where tax and interest is paid within 30 days of the date of an assessment of tax made by the Revenue Commissioners under **section 49**, interest will not be chargeable on that tax for the period of 30 days from the date of the assessment or any part of that period. **(4)**

A payment of tax by an accountable person is treated as a payment on account of tax notwithstanding (5) that the payment may be conditional or that the assessment of tax is incorrect.

Payments on account of tax due may be made at any time. Interest ceases to be chargeable on so (6) much of the payment as is referable to tax.

Where a gift becomes an inheritance by reason of the death of the disponent within 2 years of the disposition, (7) the date of death is treated as the valuation date for the purpose of calculating interest.

Where the value of a limited interest is to be ascertained in accordance with *rule 8 of Schedule 1* as if (8) it were a series of absolute interests, the section has effect as if the reference to the valuation date in the section were references to the date of the taking of that absolute interest.

### ***52 Set-off of gift tax paid in respect of an inheritance***

This section provides that gift tax and interest paid in respect of a gift which becomes an inheritance by reason of the death of the disponent within 2 years of the disposition will be treated as a payment on account of the inheritance tax subsequently payable as a result of that death.

### ***53 Surcharge for under-valuation of property***

#### Summary

This section imposes a surcharge in respect of any substantial under-valuation of the value of an asset which is comprised in a gift or inheritance and which is included in a return delivered by an accountable person. The surcharge consists of a specified percentage depending on the degree of the under-valuation (i.e. 30%, 20% or 10%) of the tax ultimately attributable to the undervalued asset. The rights of appeal contained in the capital acquisitions tax legislation will apply in ascertaining the value of any asset on which the surcharge is based

#### Details

“ascertained value” means the market value of property subject to the right to appeal under *section 66* (1) or *67*.

Where an accountable person delivers a return and, in the opinion of the Revenue Commissioners, his/her (2) estimate of the market value of any asset in the return is less than 67% of the ultimate ascertained value of that asset, a surcharge will become payable as set out in the Table. Where the value of the asset included in the return by an accountable person expressed as a percentage of the value of that asset when ultimately ascertained is—

- equal to or greater than 0% but less than 40%, the surcharge will be 30% of the tax ultimately attributable to that asset;
- equal to or greater than 40% but less than 50%, the surcharge will be 20% of the tax ultimately attributable to that asset;
- equal to or greater than 50% but less than 67%, the surcharge will be 10% of the tax ultimately attributable to that asset.

### Example

A delivers a return in respect of a house devised to him by his brother. The market value of the house is ascertained by the Revenue Commissioners at €150,000 under *section 26*. The tax ultimately payable on the valuation of €150,000 is €24,000.

If the value of the house shown in the return delivered by the brother of the deceased person—

- is €105,000, that €105,000 is 70% of €150,000, and no surcharge is involved;
- is €75,000, that €75,000 is 50% of €150,000, and the surcharge is 10% of €24,000 = €2,400;
- is €60,000, that €60,000 is 40% of €150,000, and the surcharge is 20% of €24,000 = €4,800;
- is €45,000, that €45,000 is 30% of €150,000, and the surcharge is 30% of €24,000 = €7,200.

If a taxable inheritance taken by A consists of a house valued at €150,000, €10,000 cash and private company shares, whose value is ascertained by the Revenue Commissioners at €30,000, making a total taxable value of €190,000 on which the tax is €32,000, any surcharge which might arise in connection with the valuation of the house would be based on the amount of tax attributable to the property which is that house.

The amount of tax attributable to the house in this example is €25,263, being—

$$\frac{\text{€}32,000 \times \text{€}150,000}{\text{€}190,000}$$

A surcharge is liable to interest at the rate or rates set out in Part 1 of the Table in *section 51(2)* (inserted by (3) section 145 of the Finance Act 2005). Any surcharge and interest are chargeable and recoverable as if they were part of the tax.

The taxpayer has a right of appeal to the Appeal Commissioners against the imposition of the surcharge on (4) the basis that he/she had reasonable grounds for his/her estimate of the market value of the asset giving rise to the surcharge.

Deleted (5)

### 53A Surcharge for late returns

“Specified return date” means — (1)

- (a) in relation to a valuation date occurring in the period 1 January to 31 August in any year, 31 October in that year,
- (b) in relation to a valuation date occurring in the period 1 September to 31 December, 31 October in the following year,
- (c) in relation to an inheritance arising from a discretionary trust, the date is the last day of the 4-month period after the valuation date.

For the purposes of the section —

(2)

- a person will be deemed to have failed to have delivered a return on or before the specified return date unless the error in the return is remedied on or before that date where a person has fraudulently or negligently delivered an incorrect return,
- a person will be deemed to have failed to have delivered a return on or before the specified return date unless the error in the return is remedied without unreasonable delay where a person delivers a return on or before the specified return date but does so neither fraudulently or negligently and it comes to that person's attention (or to the attention of that person's personal representatives where that person is dead) that it is incorrect,
- a person will be deemed not to have delivered a return on or before the specified return date unless a person delivers a statement or evidence within the time specified in the notice where a person delivers a return on or before the specified return date but the Revenue Commissioners, by reason of being dissatisfied with any information contained in the return, require that person by notice in writing served on him or her under *section 46(7)* to deliver such statement or evidence as may be required by them.

Where a person is required to deliver a return and fails to do so on or before the specified return date, the amount of tax for that year which is or would have been payable if such a return had been delivered will be increased by an amount (referred to as “the surcharge”) equal to — (3)

- 5 per cent of the amount of tax, subject to a maximum increased amount of €12,695 for delays in filing of less than 2 months,
- 10 per cent of the amount of tax, subject to a maximum increased amount of €63,485 for delays in filing of more than 2 months

Where the tax contained in the assessment to tax is not the amount of tax as increased, the provisions of the Act, including in particular those relating to the collection and recovery of tax and the payment of interest on unpaid tax, apply as if the tax contained in the assessment were the amount as so increased by the surcharge (4)

#### *54 Payment of tax by instalments*

##### *Summary*

This section provides that, in the case of real property (i.e. land and buildings) and in the case of a limited interest in any property, tax may, at the option of the person liable for tax, be paid by monthly instalments over a period not exceeding 5 years in such manner as may be determined by the Revenue Commissioners. Interest on an unpaid balance, at the rate or rates set out in Part 1 of the Table in *section 51(2)* (inserted by section 145 of the Finance Act 2005), will be added to each instalment. This provision does not apply to tax arising by reason of *section 20*

An outstanding balance can be paid at any time and, except in the case of a limited interest, it must be paid in the event of a sale of the property concerned. Instalments due after the death of a donee or successor, who is a life tenant, will not be payable.

##### Details

Tax may, at the option of the person delivering the return, be paid by monthly instalments over a period not exceeding 5 years in manner as may be determined by the Revenue Commissioners. Interest on any unpaid tax, at the rate or rates set out in Part 1 of the Table in *section 51(2)* (inserted by section 145 of the Finance Act 2005), will be added to, and payable with, each instalment. This provision does not apply to tax arising by reason of *section 20*. (1)

An unpaid instalment can be paid before it becomes due. (2)

Except in the case of a limited interest, all unpaid instalments must be paid on completion of a sale or compulsory acquisition of the property comprised in the gift or inheritance. (3)

Tax on an absolute interest in personal property may not be paid by instalments. Thus, the facility to pay (4) by instalments applies to tax chargeable on real property and limited interests in personal property only.

Where the donee or successor, who is a life tenant, dies before all the instalments have become due i.e. (5) within 5 years of the valuation date, those instalments due after his/her death will not be payable. If all the tax, or some instalments, have been paid in advance, the amount of tax, or those instalments due for the period subsequent to the death of the life tenant, will be treated as an overpayment of tax and will be refunded

### ***55 Payment of tax on certain assets by instalments***

#### Summary

This section allows payment of capital acquisitions tax on certain agricultural and business property by instalments at a more favourable rate of interest than would normally apply. Taxpayers have the option of spreading these payments over 5 years subject to simple interest at the rate or rates set out in Part 2 of the Table in **section 51(2)** (inserted by section 145 of the Finance Act 2005). The instalment facility for the payment of tax on agricultural and business property will continue to apply to a gift or an inheritance of such property which is sold or compulsorily acquired within the instalment period, provided that the proceeds of the sale or compulsory acquisition are re-invested in other qualifying property within 1 year of the sale or 6 years in the case of a compulsory acquisition of agricultural property. The section also gives the Minister power to vary the interest rate by Ministerial regulation.

Business property which would not, as a rule, qualify for business relief, because of the nature of the business or the size of the shareholding, is not qualifying business property for the purpose of this section.

#### Details

“agricultural property” has the same meaning as it has in **section 89**; and (1)

“relevant business property” has the same meaning as it has in **section 93**, other than quoted shares or securities. For the purposes of the definition, the minimum period of ownership provisions of **section 94** and **section 100(4)** do not apply.

Where the whole or part of the tax which is due and payable in respect of a taxable gift or taxable inheritance (2) is attributable to either or both agricultural property and relevant business property, **section 54** will apply to that whole or part of the tax notwithstanding **subsections (3) and (4)** of that section. [**Section 54(3)** provides that all unpaid instalments must be paid up on the occasion of a sale and **section 54(4)** provides that the instalment option applies, in general, to land and buildings.]

- The instalment provisions will apply to business property (other than quoted shares or securities) notwithstanding the fact that the business property does not qualify for business relief by reason of not having been held (or used in the business concerned) for the minimum ownership period.
- Where agricultural or business property is sold or compulsorily acquired within the 5 year instalment period, any unpaid instalments must be paid unless the proceeds of the sale or compulsory acquisition are re-invested in other qualifying property within a year of the sale or 6 years in the case of a compulsory acquisition of agricultural property.



- The rate at which interest is payable on the whole or part of the tax will be the rate or rates set out in Part 2 of the Table in **section 51(2)** (inserted by section 145 of the Finance Act 2005), or such other rate (if any) as stands prescribed by the Minister for Finance by regulations, for each day or part of a day instead of the rate normally applying to such tax. However, the normal rate of interest will apply to an overdue instalment.

An “overdue instalment” means an instalment which is overdue for the purposes of **section 54** (as it applies to **section 55**) or for the purposes of **paragraph (a) of subsection (2)** i.e. where agricultural property or business property is sold or compulsorily acquired and not re-invested within 1 year of the sale or compulsory acquisition in other agricultural property or relevant business property (except where the interest of the donee or successor is a limited interest). (3)

The value of a business or an interest in a business for the purposes of the section is its net value ascertained in accordance with **section 98**. (4)

The section does not apply to the 6% or 1% taxes payable on certain discretionary trusts under **sections 15 and 20**. (5)

Every regulation made under the section to alter the rate of interest payable must be laid before Dáil Éireann as soon as possible after it is made. If a resolution annulling the regulation is passed by Dáil Éireann within 21 sitting days after the regulation is laid before it, the regulation will be annulled. However, this will not affect the validity of anything done under that regulation. (6)

## ***56 Payment of inheritance tax by transfer of securities***

### Summary

This section provides that Government securities which were issued with the condition that they might be used to pay death duties may be used to pay inheritance tax.

### Details

This section provides that section 22 of the Finance Act 1954 and the regulations made under that Act shall apply, with any necessary modifications, to the payment of inheritance tax by the transfer of securities to the Minister for Finance, as they apply to the payment of death duties by the transfer of securities to the Minister for Finance.

Section 22 of the Finance Act 1954 provides that where a security is issued by the Government with the condition that it will be accepted in payment of death duties, it may be used (by the person from whom the death duties are due) to pay death duties by transfer of the security and it will be accepted at par in payment of the amount due.

The conditions under which the security will be accepted are stated in regulations made by the Minister for Finance under section 22(5) of the Finance Act 1954, and are contained in a number of statutory instruments. These statutory instruments are all broadly similar. The conditions are that—

- the stock will only be accepted in payment of death duties on the property passing under the will or intestacy of a deceased person if it formed part of such property at his/her death and for 3 months before that date (or from the date of the original subscription).
- the stock will only be accepted in payment of death duties on property passing on the death of a person under a title other than his/her will or intestacy if it formed part of such property continuously from the date of the original subscription to the date of his/her death or for 3 months immediately preceding his/her death.

If the testator bequeaths the Government stock to one person and the residue to another, it is the practice of the

Revenue Commissioners to allow the inheritance tax in respect of the residue to be paid by Government stock if the beneficiaries involved agree to this course of action.

The section applies to mainstream inheritance tax only – it does not apply to the 6% or 1% charges imposed on certain discretionary trusts.

It should be noted that the only stock which qualifies under this section is 6.5% Exchequer Stock 2000/2005.

## ***57 Overpayment of tax***

### Summary

The Finance Act 2003 significantly altered the regime for repaying interest where capital acquisitions tax has been overpaid.

The new **section 57** restricts the repayment of interest on overpayments of capital acquisitions tax (including probate tax) to valid claims made within 4 years of the valuation date or the date of payment of the tax concerned. The latter date applies where tax is paid within 4 months after the valuation date. A valid claim is one where the Revenue Commissioners have been provided with all the information to enable them establish the extent of the overpayment.

The section also provides that interest on a repayment of capital acquisitions tax will only be paid where that repayment has not been made within 6 months of receiving a valid claim for repayment. There is an exception to this general rule where the Revenue Commissioners have made an error in the operation of capital acquisitions tax. The rate of interest on repayments of capital acquisitions tax will be at the rate of 0.011% per day or part of a day.

The section came into effect, in general, by way of Ministerial Order on 1 November 2003. Before the section came into effect, overpayments of capital acquisitions tax were dealt with under the existing **section 57**, which did not require that claims be made within 4 years of the valuation date or the date of payment of the tax concerned. In addition, all overpayments of capital acquisitions tax are entitled to be paid with interest at the rate of 0.0161% per day or part of a day regardless of the circumstances surrounding the overpayment, where the claim for repayment was made before the provisions of the new **section 57** come into effect.

### Details

“relevant date”, in relation to capital acquisitions tax, means— (1)

- the date which is 93 days after the date on which a valid claim in respect of the repayment is made to the Revenue Commissioners, or
- where the repayment is due to a mistaken assumption in the operation of capital acquisitions tax on the part of the Revenue Commissioners, the date which is the date of the payment of capital acquisitions tax, interest, surcharge or penalty, as the case may be, which has given rise to that repayment;

“repayment” means a repayment of capital acquisitions tax including a repayment of—

- any interest charged,
- any surcharge imposed,
- any penalty incurred,

under the provisions of the Act;

“tax” includes probate tax, payment on account of tax, interest charged, a surcharge imposed or a penalty incurred under any provision of the Act.

Where a claim to repayment made to the Revenue Commissioners is a valid claim, they will give relief by way of repayment of the excess or otherwise as is reasonable and just, subject to the provisions of the section. (2)

Notwithstanding *subsection (2)*, no tax will be repaid to an accountable person in respect of a valid claim unless that valid claim is made within the period of 4 years commencing on – (a) 31 December in the year in which that tax was due to be paid in accordance with section 46(2A), or (b) the valuation date or the date of the payment of the tax concerned (where the tax has been paid within 4 months of the valuation date ) in respect of inheritances to which sections 15(1) and 20(1) apply. (3)

*Subsection (3)* will not apply to a claim for repayment arising in respect of discretionary trust tax under *section 18(3)* or under Double Taxation Treaties with the United States of America or the United Kingdom which allow a period longer than 4 years. (4)

This provision deals with the transitional measures and ensures that the “new” regime will not apply to a claim for repayment of tax arising on or before 28 March 2003, where a valid claim is made on or before 31 December 2004. (5)

Where a repayment of tax is being made in respect of a valid claim, simple interest will be payable at the rate of 0.011% for each day or part of a day for the period commencing on the relevant date (as defined in *subsection (1)*) and ending on the date that the repayment is made. (6)

A claim for repayment will be treated as a valid claim where it has been made in accordance with any requirements of the existing law (if any) and where all necessary information required by the Revenue Commissioners in support of the claim has been furnished to them. (7)

Interest will not be payable under the section where the amount is €10 or less. (8)

No interest will be payable under the section in respect of a repayment or part of a repayment in respect of which interest is payable under any other provision of any other enactment. (9)

Income tax will not be deducted from any payment of interest and that interest will not be reckoned in computing income for the purposes of the Tax Acts. (10)

The Minister may, from time to time, make an order prescribing a rate for the purposes of *subsection (6)*. In addition, any such order made by the Minister for Finance must be laid before Dáil Éireann as soon as possible after it is made. If a resolution annulling the order is passed by Dáil Éireann within 21 sitting days after the order is laid before it, the order will be annulled. However, this will not affect the validity of anything done under that order. (11)

The Revenue Commissioners may make regulations as they deem necessary in relation to the operation of the section. (12)

## 58 Penalties

### Summary

This section provides penalties for any acts or omissions which would contribute to loss of revenue, such as—

- failure to deliver returns, assess tax and pay tax;
- failure to permit inspection of property for valuation purposes;
- deliberate or careless delivery of returns, statements, evidence or valuations.

The section is based broadly on the penalty provision in Chapter 1 of Part 47 of the Taxes Consolidation Act 1997.

Penalties based on the tax due in a return are imposed where a person, fraudulently or negligently, fails to file a return. These tax-geared penalties came into effect by way of Ministerial Order on 1 October 2003.

### Details

A penalty of €3,000 is imposed for failure to comply with certain provisions of the Act, namely— (1)

- *section 46(2)*, which makes a person, who is primarily accountable for the payment of tax, liable to deliver a return within 4 months of the valuation date and assess and pay the tax due;
- *section 46(6)*, which makes a person who is accountable for the payment of tax liable for delivery of a return within a specified period, when required in writing to do so;
- *section 46(7)*, which provides that a person who is accountable for the payment of tax must deliver and verify within a specified period a statement of particulars relating to property relevant to the assessment of tax, when required in writing to do so;
- *section 46(8)*, which makes a person who is accountable for the payment of tax liable for the delivery of an additional return when required in writing to do so;
- *section 46(9)*, which makes a person who is accountable for the payment of tax liable for the delivery within 3 months of an additional return when he/she becomes aware of any material error in or omission from the previous return.

A further penalty of €30 is imposed for each day that the contravention or failure continues after judgement has been given by the court.

Where a person deliberately or carelessly fails to comply with a requirement to deliver a return or additional (1A) return under *section 46(2)* or (8), he/she is liable to a penalty of—

- €3,000, and
- the amount of the difference specified in *subsection (5A)*.

*Subsection (1A)* came into effect by way of Ministerial Order on 1 October 2003.

A penalty of €3,000 is imposed on any person who, having the custody or possession of property, prevents (2) or obstructs any authorised person in the performance of his/her functions in relation to the inspection of that property. This could arise under *section 26(3)*, for example, where the Revenue Commissioners authorise a person to inspect any property and give them a report on the value of that property for the purpose of the Act. That subsection goes on to state that the person having custody or possession of the property shall permit inspection at such reasonable times as the Revenue Commissioners consider necessary.

Heavier penalties are provided for where tax is underpaid as a result of deliberate or careless acts by an (3) accountable person. This can refer to any one of the following 4 acts as a result of which too little tax is paid:

- delivery of incorrect returns or additional returns;
- making incorrect statements, valuations, etc. in connection with any property comprised in the taxable gift or inheritance;
- making incorrect statements, valuations, etc. for the purpose of claiming any allowance, deduction, exemption or relief;
- making incorrect statements valuations, etc. in connection with any other matter.

The penalty is €6,345 plus the difference in tax involved as a result of the deliberate or careless act.

Where any return, additional return, statement, declaration, evidence or valuation is delivered by a person (4) neither deliberately nor carelessly and it comes to his/her notice later that it is incorrect, then, unless the error is remedied without unreasonable delay, such matter will be treated as having been negligently done by him/her. In these circumstances, the consequences in *subsection (3)* by way of penalty follow.

The difference referred to in *subsection (3)* is defined as the tax that would have been lost by the incorrect return, statements, valuations, etc. (5)

The difference referred to in *paragraph (b)* of *subsection (1A)* is the difference between— (5A)

- (a) the amount of tax paid by that person in respect of the taxable gift or taxable inheritance to which the return or additional return relates, and
- (b) the amount of the tax that would have been payable if the return or additional return had been correct

*Subsection (5A)* came into effect by way of Ministerial Order on 1 October 2003.

Where anything referred to in *subsection (3)* is delivered, made or furnished on behalf of a person, it will (6) be deemed to have been delivered, made or furnished by that person unless he/she proves that it was done without his/her knowledge and consent.

Any person who assists in or induces the delivery, making or furnishing of any return, additional return, (7) etc. which he/she knows to be incorrect is liable to a penalty of €3,000.

The section will not affect any criminal proceedings. (8)

The provisions of certain sections of the Taxes Consolidation Act 1997 are extended to capital (9) acquisitions tax. The provisions in question relate to penalty proceedings. The incorporation of these provisions into capital acquisitions tax law enables the Revenue Commissioners to use these provisions for infringements of the capital acquisitions tax code on the same basis as they are used for infringements of the income tax code.

The provisions which are incorporated into the capital acquisitions tax code are:

- section 987(4), which provides that certain statements, signed by an officer of the Revenue Commissioners, may be tendered in evidence in Court proceedings;

- section 1062, which provides that, where a penalty cannot be calculated because the tax on which it is based has not been finally ascertained, proceedings may be initiated and adjourned until the amount of tax outstanding has been ascertained;
- section 1063, which provides that proceedings for the recovery of any fine or penalty may be begun at any time within 6 years of the date on which the fine or penalty was incurred;
- section 1064, which provides for the institution of summary proceedings in certain circumstances within 10 years of the date of the committing of an offence or incurring of a penalty;
- section 1065, (deleted by s.78(3) F(No. 2)A 2013 but no effective date is provided by that Finance Act in relation to the deletion);
- section 1066, which provides that any person who gives false evidence on oath or in any written statement, will be regarded as having committed perjury;
- section 1068, which provides for an extension of the times allowed to an individual to comply with a request made by the Revenue Commissioners, and
- sections 1077E or 1077F as appropriate, which provides for penalties for deliberately or carelessly making incorrect returns, etc.

The provisions referred to above are subject to the provisions of the section and are applied with any necessary modifications to capital acquisitions tax.

### ***59 Postponement, remission and compounding of tax***

#### Summary

This section provides for—

- payment of tax to be postponed in cases of excessive hardship,
- remission of interest and of tax after certain specified periods, and
- compounding of tax in certain circumstances.

#### Details

Where the Revenue Commissioners are satisfied that tax leviable in respect of a gift or inheritance cannot **(1)** without excessive hardship be raised at once, they can allow payment to be postponed for such period, to such extent and on such terms (including the waiver of interest) as they may think fit.

Where the interest accrued on tax exceeds the amount of the tax, the Revenue Commissioners can **(2)** remit the amount by which the interest exceeds the tax

The Revenue Commissioners are empowered to remit tax and interest which remains unpaid after 20 **(3)** years from the date on which it has become due and payable

The Revenue Commissioners are empowered to compound tax where, for example, owing to the number **(4)** of deaths or dispositions involved or the complicated nature of the interest involved, it would be difficult to ascertain the exact amount of tax payable.

## ***60 Tax to be a charge***

*[This section was deleted by section 147 of the Finance Act 2010.]*

## ***61 Receipts and certificates***

*[This section was deleted by section 147 of the Finance Act 2010.]*

## ***62 Certificate relating to registration of title based on possession***

### Summary

This section introduces the requirement of a capital acquisitions tax clearance certificate for applications for registration of title to land to the Property Registration Authority (“the Authority”) which are based on possession (commonly known as “squatters title”). Before a title to land based on possession will be registered, the applicant for registration must produce to the Authority a Revenue clearance certificate to the effect that they are satisfied that any liabilities to gift tax and inheritance tax which became charged on the land (not being liabilities which became so charged prior to the date on which ownership was last registered) have been or will be paid

The necessity for production of a capital acquisitions tax clearance certificate before a title to land based on possession will be registered ensures that any liability relating to gifts and inheritances, which have never been disclosed to the Revenue Commissioners, must be discharged immediately or, if not immediately, at least within such additional time as the Revenue Commissioners consider to be reasonable.

A self-certification option is available for small properties which come within prescribed limits of value and size and are not part of a larger property and is designed to assist vendors and purchasers of small areas of land and to facilitate the work of legal practitioners, statutory bodies and the capital acquisitions tax clearance certificate area of the Revenue Commissioners.

### Details

“Act of 1964”, “the Authority” and “the Rules of 1972” are self-explanatory. (1)

“relevant period” means the period commencing on 28 February 1974 and ending on the date when registration was made. However, where ownership of the land was last registered subsequent to 28 February 1974, liabilities prior to the date of such last registration are excluded.

The Property Registration Authority (“the Authority”) may accept a certificate for a period falling short of the period referred to above if he/she has reason to believe that there was no subsequent death relevant to the title

A person applying to the Authority to become the registered owner of property based on possession must produce a certificate issued by the Revenue Commissioners to the effect that: (2)

- the property did not become charged with gift tax or inheritance tax during the relevant period, or
- any charge for gift tax or inheritance tax to which the property became subject during that period has been discharged or will (to the extent that it has not been discharged) be discharged within a time considered by the Revenue Commissioners to be reasonable.

The Authority can accept that an application without a certificate having been issued by the Revenue Commissioners is not based on possession if the solicitor makes a declaration in writing to that effect. This covers cases where, without any title details having been furnished to the Authority, a title is registered on the basis of a solicitor’s certificate that, so far as that solicitor is concerned, it is safe to register title as absolute or good leasehold. (3)

The Revenue Commissioners are required to comply with a request for a clearance certificate, provided that the conditions for such a certificate have been fulfilled and the application and the certificate are on a form provided by them. (4)

A certificate issued by the Revenue Commissioners for the purposes of *subsection (2)* shall be in such terms and subject to such qualifications as they think fit. It will not, however, be a certificate for any other purpose. (5)

The reference in *subsection (2)* to a certificate issued by the Revenue Commissioners will be construed as including a certificate to which *subsection (7)* relates i.e. in cases where self-certification by solicitors apply. (6)

An option of self-certification will be available where the solicitor is satisfied that the property in respect of which the application is being made is within prescribed limits of size and market value and is not part of a larger property which is not within those limits. The prescribed limits in question are: (7)

- €19,050, in a case where the area occupied by the property does not exceed 5 hectares, or
- €127,000, in a case where the applicant is a statutory authority.

There is an exception to the rule that the small property being registered should not be part of a larger property which exceeds the limits set out in *subsection (7)*. This arises where the sole purpose of the application for registration is the rectification of the register to take account of small mapping errors not exceeding 500 square metres in area or €2,540 in market value and where the application is not part of a series of related applications relating to a larger holding of property exceeding either of these limits. (8)

### ***63 Recovery of tax and penalties***

#### Summary

Chapter 1C of Part 42 of the Taxes Consolidation Act 1997 deals with the recovery of tax, interest and penalties. It makes every sum due for tax, interest and penalties a debt due to the Minister for Finance for the benefit of the Central Fund. It also provides for the recovery of such sums by court action.

#### Details

*[This subsection was repealed by Schedule 4 to the Finance (No. 2) Act 2008 – see now Chapter 1C of Part 42 of the Taxes Consolidation Act 1997.]* (1)

*[This subsection was repealed by Schedule 4 to the Finance (No. 2) Act 2008 – see now Chapter 1C of Part 42 of the Taxes Consolidation Act 1997.]* (2)

The Revenue Commissioners can take proceedings in the Circuit Court to enforce the delivery of a return in a case where the donee or successor fails to deliver a return. This provision is necessary because, although the Revenue Commissioners have power under *section 49* to make an assessment to the best of their knowledge in the absence of a return, cases will arise where they will not have sufficient information on which to make a return. In that situation, the only remedy is to oblige the persons accountable for the payment of tax to furnish the information by delivering a return. (3)

Where the Revenue Commissioners have to look to the owner of property on which the tax is a charge under *section 60* to recover the tax, they can issue an order directing the owner to pay the tax. (4)



*64 Application of certain income tax provisions in relation to the collection and recovery of capital acquisitions tax, etc.*

*[This section was repealed by Schedule 4 to the Finance (No. 2) Act 2008 – see now Chapter 1C of Part 42 of the Taxes Consolidation Act 1997.]*

*65 Evidence in proceedings for recovery of tax*

*[This section was repealed by Schedule 4 to the Finance (No. 2) Act 2008 – see now Chapter 1C of Part 42 of the Taxes Consolidation Act 1997.]*