

# NOTES FOR GUIDANCE

## CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

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

### Part 5: Provisions relating to Gifts and Inheritances

**Revenue**  
Cáin agus Custaim na hÉireann  
Irish Tax and Customs



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 5 PROVISIONS RELATING TO GIFTS AND INHERITANCES .....2**

*Overview ..... 2*

*31 Distributions from discretionary trusts ..... 2*

*32 Dealings with future interests ..... 3*

*33 Release of limited interests, etc. .... 4*

*34 Settlement of an interest not in possession ..... 4*

*35 Enlargement of interests ..... 5*

*36 Dispositions involving powers of appointment..... 5*

*37 Cesser of liabilities ..... 6*

*38 Disposition enlarging value of property ..... 7*

*39 Gift subject to power of revocation ..... 8*

*40 Free use of property, free loans, etc. .... 8*

*41 When interest in assurance policy becomes interest in possession ..... 9*

*42 Provisions to apply where section 98 of Succession Act 1965 has effect..... 9*

*43 Disposition by or to a company..... 10*

*44 Arrangements reducing value of company shares..... 11*

## *Part 5: Provisions Relating to Gifts and Inheritances*

### **PART 5 PROVISIONS RELATING TO GIFTS AND INHERITANCES**

#### *Overview*

Special provisions dealing with express trusts (i.e. trusts created by deed or under a will) are provided for in this Part. Such trusts may be reconstituted or broken up, wholly or partly. To provide for these situations, the legislation includes provisions covering dealings with future interests (*section 32*), the release of limited interests (*section 33*), resettlements (*section 34*) and enlargement of interests (*section 35*).

This Part also contains provisions dealing with other matters dealing with gifts and inheritances as follows:

- the treatment of distributions from discretionary trusts,
- who the disponent is in the case of dispositions involving powers of appointment,
- the cesser of liabilities,
- dispositions enlarging the value of property,
- gifts subject to a power of revocation,
- the free use of property and interest-free loans,
- when an interest in an assurance policy becomes an interest in possession,
- provisions applying where section 98 of the Succession Act 1965 has effect,
- dispositions made by or to a company, and
- arrangements reducing the value of company shares.

#### *31 Distributions from discretionary trusts*

##### Summary

The section provides that distributions from discretionary trusts will be taxed as and when they are made. The Act does not impose mainstream tax on the initial settlement of property because no person takes a beneficial entitlement in possession in the property at that time.

##### Details

Where a person becomes beneficially entitled in possession to any benefit—

- under a discretionary trust, other than a discretionary trust referred to in *paragraph (b)*, otherwise than for full consideration in money or money's worth paid by him/her, he/she is deemed to have taken a gift; **(a)**
- under a discretionary trust, otherwise than for full consideration in money or money's worth paid by him/her, created by will at any time, **(b)(i)**
- by a disposition, where the date of the disposition is on or after 1 April 1975 and within 2 years prior to the death of the disponent, or **(b)(ii)**
- by a disposition *inter vivos* and limited to come into operation on a death, he/she is deemed to have taken an inheritance. **(b)(iii)**

## ***Part 5: Provisions Relating to Gifts and Inheritances***

### ***32 Dealings with future interests***

#### Summary

This section deals with the situation where a future interest in property is disposed of (whether or not for full consideration) before it becomes an interest in possession. The purchaser or transferee of that future interest is liable to capital acquisitions tax as if he/she was the donee or successor under the original disposition. However, tax is computed by reference to the relationship between the actual donee or successor under the original disposition.

#### Details

In **subsection (2)**, “benefit” includes the benefit of the cesser of a liability referred to in section 37. (1)

Where a person disposes of a future interest in property before it becomes an interest in possession so that when that interest comes into possession it is taken by a person other than the person who was entitled to the property under the original disposition, tax will be payable as if the latter person became entitled to the property. (2)

#### **Example**

A settles property on B for life and, on B’s death, the property passes to C absolutely. While B is still alive, C assigns his interest to D. On B’s death, tax is payable as if D took the property.

The person actually entitled to the property (D in the example) is the person made liable to deliver a return and pay the tax. However, the tax payable is computed by reference to the relationship of the donee or successor to the disponent.

The provisions of **subsection (2)** will not prejudice any charge to tax in respect of any gift or inheritance affecting the same property or any part of it under a disposition other than the disposition made by a person other than the original disponent. (3)

#### **Example**

No tax is charged on the transfer by C of his future interest to D until D in the above example takes an interest in possession i.e. on B’s death. However, 2 claims for tax have been postponed i.e.:

- tax on the benefit taken by D (as transferee from C) from A (in effect, C’s tax, payable by D);
- tax on the benefit taken by D directly from C (D’s own tax).

There could, of course, be more than 2 such claims arising simultaneously if, for example, D also died before the life tenant, leaving his future interest to E, who also died before the life tenant leaving his interest to F, and so on.

[Where more than one charge to tax on the same property arises on the same event, the tax which is earlier in priority is allowed as a credit against the tax which is later in priority – see note on **section 105**.]

## ***Part 5: Provisions Relating to Gifts and Inheritances***

### ***33 Release of limited interests, etc.***

#### Summary

This section deals with the termination of limited interests (e.g. life interests) before the time when such interests are limited to cease. Where the limited interest comes to an end before the event on which it is limited to cease happens (e.g. before the death of a life tenant), tax is payable as if the event had happened.

#### Details

“event” includes— (1)

- a death, and
- the expiration of a specified period.

Where an interest in property, which is limited by the disposition which created it to cease on an event, comes to an end before the time when that limited interest is to cease, tax will be payable as if the person who had the limited interest had died immediately before the coming to an end of the interest. (2)

3 common examples of early termination of limited interests are as follows:

- where the life tenant acquires a remainder interest;
- where the remainderman acquires the preceding life interest; and
- where the parties to a settlement agree to terminate the trust by dividing the trust funds between them.

The provisions of ***subsection (2)*** will not prejudice any charge to tax arising under a disposition made by a person other than the original disponer. [***Section 103*** ensures that property in respect of which tax is chargeable more than once on the same event will not be included more than once in respect of that event – see note on that section.] (3)

A double charge to tax does not arise where a person settles property on himself/herself for his/her life and that person surrenders his/her life interest during his/her lifetime. (4)

### ***34 Settlement of an interest not in possession***

#### Summary

This section provides that the tax payable on the cesser of a life interest will not be avoided by the remainderman having settled his/her interest on himself/herself.

#### Details

“event” has the same meaning as in ***section 33(1)***. (1)

The tax payable on the cesser of a life interest cannot be avoided where a person who has a future interest in property settled his/her remainder interest on himself/herself. (2)

#### **Example**

Where A settles property on B for life and, on B’s death, to C absolutely. While B is still alive, C settles his future interest on himself for life and, on his death, to D absolutely. When B dies, the person becoming entitled in possession is C, but because he takes under his own disposition he might argue that he was entitled to exemption under ***section 83*** (which provides an exemption where a person settles property on himself/herself).

This subsection ensures that C in the example will be liable to tax on B’s death.

The section also applies to “a liability within the meaning of ***section 28(9)***”.

## ***Part 5: Provisions Relating to Gifts and Inheritances***

### **Example**

A transfers property to B absolutely subject to the payment of an annuity equal to 1/3rd of the income from the property to C for life. B is taxed on the market value of the property less 1/3rd of that value (i.e. “the appropriate part” – see **section 28(9)**). If, however, B had settled the property on himself for life, with remainder to his children, this postponed claim for tax could be defeated because when C (the annuitant) died, it could be said that the benefit of the cesser of the annuity came to B as life tenant under his own disposition and is, therefore, exempt from tax under **section 83**.

The subsection ensures that the claims for tax under the original disposition will stand as if the later disposition had not been made.

Where tax is payable under a disposition other than a disposition referred to in **subsection (2)** in respect of a later event (e.g. where a person settles a future interest in property on himself/herself for life and after his/her death to his/her children), the normal claims will arise when he/she dies and his/her children take inheritances from him/her. (3)

### ***35 Enlargement of interests***

#### Summary

This section deals with the situation where a person has a limited interest in property and that interest is enlarged to an absolute interest (e.g. because the owner of the limited interest takes a gift or inheritance of the remainder interest). The section provides that tax is charged on the enlarged interest on a taxable value equal to the difference between the value of the entire property at the valuation date and the value of the limited interest at that date.

The section does not apply where the enlargement occurs under the disposition under which the limited interest was created.

#### Details

Where a person who has a limited interest in property takes a further interest in that property and becomes the absolute owner, the value of the latter interest at the valuation date is reduced by the value of the limited interest. (1)

The value of the limited interest is valued in accordance with the Rules in **Schedule 1** for a limited interest in the whole property commencing on the date of the gift and ending on the last day of the original term of the limited interest.

“value” is defined for the purposes of **subsection (1)(a)** as the amount that would be the incumbrance-free value within the meaning of **section 28(1)** if the limited interest were taken as a taxable gift or taxable inheritance on the valuation date. (2)

The deduction provided for in **subsection (2)** does not apply where the enlargement of the limited interest occurs under the disposition under which the limited interest was created (3)

### ***36 Dispositions involving powers of appointment***

#### Summary

This section provides that where a person has a general power of appointment over property, he/she will be treated as disponent on the exercise of, failure to exercise or release of, that power.

Where, however, he/she has a special power of appointment, on the exercise of, failure to exercise or release of, that power, the creator of the power is treated as the disponent.

## **Part 5: Provisions Relating to Gifts and Inheritances**

### Details

“general power of appointment” is defined in **section 2(1)** to include every power, right or authority whether exercisable only by will or otherwise which would enable the holder of the power to appoint or dispose of property to whoever he/she thinks fit or to obtain such power, right or authority (except powers which he/she has in his/her capacity as a trustee for example). (1)

**Section 2(2)** adds that this includes power to charge money on property and on the rights of a tenant in tail in possession, and provides that the person has such a power, even though he/she may be under some legal or physical disability.

“absolute owner” is defined in **section 2(1)** to include the interest of a person who has a general power of appointment.

The scheme of the Act is to treat a person who has a “general power of appointment” over property as if he/she were the absolute owner of that property. If a person is given such a power, he/she is taxed as

having received the property absolutely. If he/she exercises the power (or allows it to go by default), the person then taking the property takes it from him/her as disponent as if he/she were the absolute owner of the property.

The disponent will be treated as the original settlor and the disposition will be treated as the original settlement where the exercise of, the failure to exercise, or the release of, a general power of appointment form part of an arrangement whose sole or main purpose is the avoidance of CAT. In addition, the 6% and 1% charges imposed on certain discretionary trusts will not be prejudiced where the grant of a general power of appointment forms part of an arrangement whose sole or main purpose is the avoidance of CAT. (1A) (1B) (1C)

“special power of appointment” is defined in **section 2(1)** to mean a power of appointment which is not a “general power of appointment” (as defined). A power of appointment is an authority, as distinct from ownership, given to a person to nominate the persons who are to receive property beneficially. An example of a special power of appointment, in the sense in which it is used in the Act, would be where A gives property to trustees to hold on trust for B for life and, on B’s death, for such of A’s children as the trustees by will appoint. When one of A’s children takes a benefit under an appointment by B by will, he/she will be treated as taking under A’s disposition and from A as disponent. (2)

### **37 Cesser of liabilities**

#### Summary

This section provides that where property is taken by a donee or successor subject to a liability, tax will be payable by the person benefiting when that liability ceases.

#### Details

“appropriate part” has the same meaning as it has in **section 5(5)**. (1)

Where property is given to A, subject to an annuity to B for his/her life, the benefit taken by A is subject to a liability. It is provided by **section 28(8)** that there may be deducted, in calculating the taxable value of A’s benefit, the appropriate part of the property required to produce B’s annuity. If the total property taken by A is valued at €500,000, which produces an income of €12,000 per annum and B’s annuity was €6,000 per annum, “the appropriate part” calculated as follows would be deducted from A’s benefit: (2)

$$\frac{\text{€ 6,000}}{\text{€12,000}} \times \text{€ 500,000} = \text{€ 250,000}$$

When B dies, A will be taxed on the benefit accruing to him by reason of the cesser of the annuity

The value of the cesser of the liability is calculated at the date when the liability ceases, where the liability is charged on the property. It should be noted that the value of the “appropriate part” at the date of the cesser of the liability will be different from the value of that liability at the date when it commenced.

## ***Part 5: Provisions Relating to Gifts and Inheritances***

Where the liability is not charged or secured by any property at the time of its cesser, the value of the cesser of the liability is deemed to consist of a notional sum which would produce an annual income equal to the annual value of the liability. This notional sum is calculated in accordance with **section 5(2)(b)** i.e. on the basis of the yield from the most recent Government security with a redemption date of not less than 10 years after the date it was issued.

If the yield were 6%, for instance, the notional capital attributed to an annuity of €6,000 would be €100,000.

The notional capital is deemed not to be situated in the State at the date of the gift or at the date of the inheritance. This ensures that tax is not payable where the disponer was not domiciled in the State at the date of the disposition, where that date was before 1 December 1999. This is also the case where the disponer or the donee/successor are not resident or not ordinarily resident in the State at the date of the disposition, where that date is on or after 1 December 1999 (see note on **section 5(3)** as regards the reason for this provision). (3)

### ***38 Disposition enlarging value of property***

#### Summary

This section deals with the situation where a person takes a beneficial interest in property which has the effect of increasing the value of any other property which he/she has already received from the same disponer. The increase in the value of the original property is deemed to be a gift or inheritance, as the case may be, taken on the date when he/she received the additional property.

The object of the section is to prevent the splitting of property for tax avoidance purposes in cases where the market value of the whole property is greater than the sum of its parts.

#### Details

“company”, in **subsection (4)**, means a private company within the meaning of **section 27**. (1)

“property”, does not include any property to which a donee or successor became beneficially entitled in possession prior to 28 February 1969 (2)

Where the taking by any person of a beneficial interest in any property (referred to as the additional property) under any disposition made by a disponer has the effect of increasing the value of any other property (referred to as the original property) to which that person is beneficially entitled in possession, and which has been derived from the same disponer, the following provisions apply: (3)

- the increase in value so effected is deemed to be a gift or an inheritance, as the case may be, arising under that disposition and taken by that person, as donee or successor, from that disponer, at the time he/she took the beneficial interest in the additional property; (a)
- the original property is treated as having been increased in value if the market value of that property at the time referred to in **paragraph (a)** would be greater if it was sold as part of an aggregate of the original property and the additional property rather than as a single item of property. The increase in value for the purposes of the section will be the amount by which the market value of the original property, if sold at that time as part of such aggregate, would be greater than the amount of the market value of that property if sold at that time as a single item of property; (b)
- the additional property will, for the purpose of determining its market value, be deemed to be part of an aggregate of the original property and the additional property; and (c)
- the market value of any property which is to be valued as part of an aggregate of property will be ascertained as being so much of the market value of such aggregate as may reasonably be attributed to that part. (d)



## **Part 5: Provisions Relating to Gifts and Inheritances**

The re-valuation of the original gift will apply even if, at the date of the second transfer, the beneficiary has disposed of the original property within the previous 5 years (otherwise than for full consideration in money or money's worth) or has disposed of it to a private company of which he/she has control within the meaning of **section 27(4)(b)**. (4)

### **39 Gift subject to power of revocation**

If a person makes a gift of property to a donee but reserves to himself/herself the power to revoke the gift, this section treats the property as remaining in the donor until he/she releases the power of revocation, or until he/she dies (at which stage the power of revocation lapses). In that case, the donee will be taxed as becoming beneficially entitled in possession. If, during the period between the original disposition and the release or lapse of the power of revocation, the donee has the free use of the property, he/she will be taxed as receiving a gift under **section 40** in each year of the value of the use of the property for that year.

### **40 Free use of property, free loans, etc.**

#### Summary

This section provides that where a person, who is not beneficially entitled in possession to property, is allowed the free use of the property or takes an interest-free loan, he/she will be taxed on the basis that he/she takes a gift, in each year, of the value of the use of the property for that year. The section will apply, for example, to persons who are objects of a discretionary trust and are allowed the free use of trust assets and to a person occupying property under a disposition which may be revoked (see **section 39**).

#### Details

“relevant period”, in relation to any use, occupation or enjoyment of property, means the period of 12 months ending on 31 December in each year. (1)

If a person who is not beneficially entitled to property in possession is allowed to have the use, occupation or enjoyment of any property other than for full consideration in money or money's worth, that person will be deemed to take a gift in each relevant period (see below) during the whole or part of which he/she is allowed to have such use, occupation or enjoyment. (2)

A gift referred to in **subsection (2)** is deemed to consist of a sum equal to the difference between the amount of any consideration, in money or money's worth, given by the person referred to in **subsection (2)** for such use, occupation or enjoyment and the best price obtainable in the open market for such use, occupation or enjoyment. (3)

The gift or inheritance is treated as being taken on the last day of the relevant period i.e. 31 December or, if earlier, on the date of the cesser of the use, occupation or enjoyment. (4)

Where the use, occupation or enjoyment of property is allowed to a person who is not beneficially entitled in possession to that property under a disposition— (5)

- made by will; (a)
- where the date of the disposition is on or after 1 April 1975 and within 2 years prior to the date of death of the donor; or (b)
- which is a disposition *inter vivos* and the use, occupation and enjoyment is had by that person after the cesser of another person's life interest, (c)

references in **subsections (2), (3) and (4)** to gifts are treated as references to inheritances.

The sum referred to in **subsection (3)** is deemed not to be situated in the State at the date of the gift or at the date of the inheritance for the purposes of sections 6(1)(c), 6(2)(d), 11(1)(b) and 11(2)(c). Those sections determine when a gift or inheritance is a “taxable gift” or “taxable inheritance” for capital acquisitions tax purposes. Because **subsection (6)** deems the sum representing the free use of property to be situated outside the State, whether or not a charge to tax arises in relation to free use of property taken will depend on the residence and ordinary residence status of the donor and the donee or successor, where the gift or inheritance (6)

## ***Part 5: Provisions Relating to Gifts and Inheritances***

is taken under a disposition on or after 1 December 1999, and the domicile status of the disposer where the disposition is before that date.

In the absence of this provision, the gift deemed to have been taken under **subsection (3)** would be regarded as being located in this country and might be taxable even where the donor and donee are not resident or ordinarily resident in the State.

### ***41 When interest in assurance policy becomes interest in possession***

#### Summary

This section is designed to prevent an assurance policy being taxed before benefits become payable under it. Tax is payable on the proceeds of the policy if they become the subject of a gift or inheritance.

#### Details

For the purposes of the Act, an interest in a life assurance policy will be deemed to become an interest in possession when either— (1)

- the policy matures, or
- prior to the maturing of the policy, the policy is surrendered to the insurer for a consideration in money or money's worth.

However, if during the currency of the policy, the insurer makes a payment of money or money's worth in full or partial discharge of the policy, the interest will be deemed to have come into possession to the extent of such payment.

Contracts for deferred annuities are treated in the same way. The annuitant is treated as coming into beneficial possession on the date of the first payment under the policy. (2)

### ***42 Provisions to apply where section 98 of Succession Act 1965 has effect***

#### Summary

This section deals with benefits arising under section 98 of the Succession Act 1965. Under that section, a benefit by will to the testator's child or other issue is (subject to any contrary intention in the will) preserved from lapse where the beneficiary predeceases the testator, if the beneficiary leaves issue living at the testator's death. The benefit takes effect as if the beneficiary had died immediately after the testator and the property devolves under the beneficiary's will or intestacy. This section prevents a double charge to tax in such cases. The person who actually takes the benefit is taxed as if he/she took that benefit from the testator.

#### Details

Under the doctrine of lapse, if a beneficiary under a will dies before the testator, the gift to him/her lapses and falls into the residue. Section 98 of the Succession Act 1965 makes an exception in the following type of case: (1)

A testator, by will, gives a legacy to his/her child or other issue. The legatee dies before the testator. The legatee leaves children who survive the testator. Section 98 provides (unless the will shows a contrary intention) that where that happens, the legacy does not lapse, but takes effect as if the death of the legatee had happened immediately after the death of the testator

Section 98 ensures that the legacy goes to the legatee's estate, so that it then passes under the legatee's will or intestacy.

If no provision were made to the contrary, there would be 2 claims for tax arising in such a case, i.e.:

- tax on the benefit taken by the legatee from the testator, and
- tax on the benefit taken from the legatee by the beneficiaries under his/her will or intestacy.

## ***Part 5: Provisions Relating to Gifts and Inheritances***

This section provides that only one claim for tax will arise and that tax will be on a benefit taken by the ultimate beneficiaries from the original testator, as disponer.

The person ultimately benefiting will be deemed to take an inheritance from the testator, as disponer, and not from the deceased child. (2)

### ***43 Disposition by or to a company***

#### Summary

This section provides that, in the event of a disposition being made, or a gift or an inheritance being taken, by a private company as defined in **section 27**, or in the event of consideration being paid to or by the company, the beneficial owners of shares and of certain entitlements in the company will be treated as disponers, donees or successors or, as paying or receiving the consideration, as the case may be, in the proportions as the specified amounts (as defined) relating to their beneficial interest in the shares and entitlements bear to each other.

Where shares and entitlements are held in trust and there is no ascertainable beneficial owner, a disposition made, or consideration paid, by a company is considered to have been made or paid by the disponer in relation to the trust property.

#### Details

“company” means a private company within the meaning of **section 27**; (1)

“market value” means—

- in the case of a person’s beneficial interest in shares and entitlements, the market value of that interest on the date of the payment, disposition, gift or inheritance, as the case may be, ascertained by reference to the market value on that date of the shares and entitlements in which the interest subsists, and
- in the case of a share in which a beneficial interest subsists, the market value of that share ascertained in the manner described in **section 27** as if, on the date on which the market value is to be ascertained, it formed an apportioned part of the market value of a group of shares consisting of all the shares in the company issued and outstanding on that date;

“share” has the same meaning as it has in **section 27**;

“specified amount”, in relation to a person’s beneficial interest in shares and entitlements, means—

- in the case of consideration paid, or a disposition made, by a company, a nil amount or, if greater, the amount by which the market value of the beneficial interest was decreased as a result of the payment of the consideration or the making of the disposition, or
- in the case of consideration, or a gift, or an inheritance taken by the company, a nil amount or, if greater, the amount by which the market value of the beneficial interest was increased as a result of the taking of the consideration, gift or inheritance (as the case may be).

A disposition made, or consideration paid, by a private company is to be treated as made or paid by the ultimate shareholders and by certain creditors. (2)

A gift or inheritance, or consideration taken, by a private company is to be treated as taken or paid by the ultimate shareholders and by certain creditors.

The apportionment of the benefit given or received by the company is based on the proportions which the specified amounts relating to the shareholdings bear to each other.

For the purposes of **subsection (2)**; all acts, omissions and receipts of the company are deemed to be those of the beneficial owners of the shares and entitlements, referred to in **subsection (2)**; in the company, in the proportions mentioned in that subsection. (3)

## ***Part 5: Provisions Relating to Gifts and Inheritances***

Where one of the shareholders is itself a company, the company is looked through in the same way as in *subsection (2)*. (4)

Where the shares in question are held in a discretionary trust, consideration paid, or a disposition made, by the company in question is treated as paid or made, as the case may be, by the person or persons who settled the property in the discretionary trust. (5)

### ***44 Arrangements reducing value of company shares***

#### Summary

This section counteracts the avoidance of capital acquisitions tax by transferring the rights attaching to particular shares. The value of the rights transferred is deemed to be a gift or inheritance, as the case may be.

#### Details

“arrangement” means an arrangement which is made on or after 25 January 1989, and includes— (1)

- any act or omission by a person or by the trustees of a disposition;
- any act or omission by any person having an interest in shares in the company;
- the passing by any company of a resolution; or
- any combination of acts, omissions or resolutions referred to above;

“company” means a private company within the meaning assigned by section 27;

“event” includes—

- a death, and
- the expiration of a specified period;

“related shares” means the shares in a company, the market value of which shares is increased by any arrangement;

“related trust” has the meaning assigned to it by subsections (3) and (5);

“specified amount” means an amount equal to the difference between—

- the market value of shares in a company immediately before an arrangement is made and ascertained under the provisions of section 27 as if each share were a share in a company controlled by the disponent concerned, and
- the market value of those shares, or of property representing those shares, immediately after the arrangement is made and ascertained under the provisions of section 26.

Any such specified amount is deemed to be situated where the private company is incorporated.

A reference to a company controlled by the disponent concerned is a reference to a company that is under the control of one or more of the following: (2)

- that disponent;
- the relatives of that disponent;
- nominees of relatives of that disponent; and
- the trustees of a settlement whose objects include that disponent or relatives of that disponent.

## ***Part 5: Provisions Relating to Gifts and Inheritances***

A company which is so controlled by that disponent is regarded as being itself a relative of that disponent.

Where the absolute owner of shares in a company enters into an arrangement after which the shares are reduced in value, any corresponding increase in value in related shares (as defined) will be deemed to be a gift or inheritance given by him/her to the owners of those related shares. The amount of the increase is called the “specified amount”. (3)

If the property in a trust in which a person has a limited interest includes shares in a company, the trust is deemed to have held 2 types of property in relation to those shares, namely— (4)

- the specified amount, and
- the shares as reduced.

Tax will be payable in respect of the specified amount as if the limited interest had ceased and the owners of the related shares had taken a gift or inheritance of the specified amount from the disponent in relation to the trust.

Where value is shifted out of shares comprised in a discretionary trust, the following provisions apply: (5)

- if the shares the value of which is increased (the “related shares”) are owned beneficially, the beneficial owners of the related shares are deemed to have taken a benefit;
- if the related shares are held by a discretionary trust (the “related trust”), the disponent in relation to the related trust is deemed to have taken a benefit.

The provisions of **subsections (3), (4) and (5)** will not prejudice any charge for tax under any disposition on or after the making of an arrangement referred to in those subsections. (6)

Where the shares in a company, which are held in trust under a disposition made by any disponent, are related shares by reason of any arrangement referred to in the section, any gift or inheritance taken under the disposition on or after the arrangement is made and comprising those related shares, or property representing those related shares, will be deemed to be taken from that disponent. (7)

As regards the tax due and payable in respect of a gift or inheritance taken by virtue of this subsection under a discretionary trust— (8)

- the disponent in relation to the related trust will not be a person primarily accountable for the payment of such tax, and
- a person who is a trustee of the related trust for the time being at the date of the gift or at the date of the inheritance, or at any date subsequent to that date, will be the person primarily accountable.

A person who is accountable for the payment of tax in respect of any specified amount, or part of a specified amount, taken as a gift or an inheritance under the section has power to raise the amount of tax or interest and any expenses properly paid or incurred by him/her in respect of such tax or interest, by the sale or mortgage of, or a terminable charge on, the related shares for the purpose of payment of the tax or raising the amount of tax when it has already been paid. (9)

Tax due and payable in respect of a taxable gift or inheritance taken under the section remains a charge on the related shares in the relevant company. (10)

Where related shares are subject to a discretionary trust immediately after an arrangement is made in accordance with the provisions of the section, the amount by which the market value of such shares is increased by such arrangement will be property for the purposes of a charge for tax arising by reason of the provisions of **section 15**. (11)

If shares are redeemed under an arrangement made on or after 5 May 1993 to reduce the value of shares, any property representing shares is deemed, immediately after the arrangement, to have a market value of nil. This provision does not apply, however, where the redeemed shares are actually represented by property (e.g. the proceeds from the sale of the shares). (12)