Gift/Inheritance Tax - A Guide to completing the Self - Assessment Return (Form IT 38)

2003 Edition

This document is a guide to filing the self-assessment IT38 return prior to the introduction of CAT modernisation in 2010.

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Gift/Inheritance Tax - A Guide to completing the Self Assessment Return (Form I.T. 38)

Contents

Glossary

Absolute Interest:	Full and complete ownership of property.
Accountable Person:	The person accountable to Revenue for payment of tax. The person who is primarily accountable is normally the beneficiary but agents, trustees, personal representatives, disponers, etc. are secondarily accountable for payment of tax.
Aggregable Benefit:	Any other benefit taken by the beneficiary on or after 5 December 1991 from a disponer within the same group threshold as the disponer of the current benefit/s.
Agricultural Value:	Value of agricultural property after relief of 90% has been applied.
Annuity:	A yearly payment of a certain sum of money.
Beneficially Entitled In Possession:	Having a present right to the enjoyment of property as opposed to having a future such right.
Beneficiary:	Person entitled to benefit, i.e. gift or inheritance.
Bequest:	Personal property passing under a will.
Bilateral Relief:	Bilateral double taxation relief applies in respect of foreign property where a double taxation agreement exists. At present there are two such agreements, i.e. with the United Kingdom and the United States of America. It prevents tax being charged on the same property in two different countries or property not being taxed in either country.
Contingency:	A benefit which under the terms of the disposition which created it may cease on the happening of an event.
Contracting State:	Ireland or United States of America in relation to Double Taxation Convention between Ireland and USA and Ireland or United Kingdom in relation to the Double Taxation Convention between Ireland and United Kingdom.
Deed:	An instrument written on paper, signed, sealed and delivered to prove and testify the agreement of the parties to the things contained in the deed (normally the transfer of property).
Devise:	Real property e.g. land, building passing under a will.
Disponer:	The person who provided the gift or inheritance.
Disposition:	Mode by which property passes, e.g. will, intestacy, survivorship, nomination, deed.
Domicile:	The country in which a person is or is presumed to be permanently resident. It depends on the physical fact of residence plus the intention of remaining (see also Part 1.4 of this Guide).
Donee:	Person who receives a gift.
Donor:	Person who provided gift (see also disponer).
Executor:	Person authorised by a will to finalise a deceased person's affairs. The executor has authority to act from the date of death. Any other Personal Representative only has authority to act when a Grant of Administration is obtained.
Expression of Doubt:	Where the taxpayer is in doubt as to the application of law or the treatment of any matter in the Gift/Inheritance Tax return where it has not been possible to obtain a definite ruling on a particular transaction a formal expression of doubt facility can be made on the return.
Favourite Nephew/Niece:	A niece or nephew who is entitled to a Group A threshold in respect of business assets (see Appendix 1).
Fiscal Domicile:	The country where a person has his/her location of economic interests.
Free use:	Having the use and enjoyment of property either for no consideration or for less than full consideration.
Grant of Administration:	Grant of representation where there is no will, i.e. intestacy or with will annexed, i.e. where no executor is available.
Grant of Probate:	Grant of representation where there is a will.

Grant of Representation: In order to get legal confirmation of his or her appointment, the Personal Representative must apply to the Probate Office of the High Court for a document known as a Grant of Representation. The Grant of Representation acts as an assurance to financial institutions (e.g. banks, building societies, credit unions, etc.) that they can safely place the deceased's assets in the hands of the person named as Personal Representative in the grant.

Group Threshold: A person's tax free threshold (see also Part 2.5 of this Guide).

Heritage Property/Objects: Stately houses/gardens and pictures, prints, books, manuscripts, works of art, jewellery and scientific collections which according to the Revenue Commissioners are of national, scientific, historic or artistic interest.

Incorporated Company: A company that has its own legal identity.

Incumbrance Free Value: The value of the benefit after deduction of liabilities, costs and expenses.

Intestacy: Dying without leaving a will.

Joint Tenancy: The ownership of property by two or more persons who have the same interest in the whole property, without any separate shares and on the death of one joint tenant his/her share passes to the surviving joint tenant(s).

Legacy: Personal property passing by will.

Life Tenant: Person given property for the duration of his/her life.

Limited interest: An interest that is less than an absolute interest, i.e. for life or for a certain period of time.

Lineal Ancestor: Parent, grandparent, great-grandparent, etc.

Lineal Descendant: Child, grandchild, great-grandchild, etc.

Nomination: Nominated property is any property which the deceased placed in the name of another person for their benefit on his/her death. Nominated property passes directly to that person in accordance with the rules/regulations under which it was invested and does not pass to the deceased's personal representative to be distributed according to the will/intestacy.

Ordinary Residence: The term "ordinary residence" is used in relation to a person's normal place of residence.

An individual who has been resident in the State for three consecutive tax years becomes ordinarily resident with effect from the commencement of the fourth year.

An individual who is ordinarily resident does not cease to be ordinarily resident until he/she has had three consecutive years in which he/she was not resident in the State.

Pecuniary Bequest: Money passing under a will.

Period Certain: A certain period of time, e.g. 10 years.

Personal Representative: The person responsible for finalising a deceased's affairs.

Power of Revocation: Where a gift is given in the lifetime of a disponer in which he/she retains a right to revoke the gift, i.e. take it back at any time.

Quantum Meruit: Where one person has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for.

Quoted Shares: Shares quoted on the stock market.

Remainderman: Person who takes an absolute interest in property on the coming to an end of a limited interest.

Reserved Rights: Disponer reserves rights charged on the property for either him/herself or for another person, i.e. right of residence or right of residence, maintenance and support.

Residence: An individual will be regarded as being resident in the State for a year if he/she:

(a) spends 183 days or more in the State in that year;
or
(b) has a combined presence of 280 days or more in the State in that year and in the preceding year.

An individual must be resident in the State for more than 30 days in either year to establish residence based on the above aggregate. If a person is not resident for more than 30 days in a year as above, the actual period of residence which is less than 30 days in that year is not taken into account in applying the aggregate test.

An individual is deemed to be present in the State for a day if he is present in the country at midnight.

	A non-resident individual coming to Ireland who can show that he/she intends to remain here and be resident in the following year, may elect, in writing, to be treated as resident for the year of arrival.
Residue:	The portion of a deceased's estate that remains after all debts and legacies have been satisfied.
Residuary Legatee (and/or devisee):	The person who takes the residue of the estate after all debts and legacies have been satisfied. Legatee takes the personal estate and devisee takes the real estate.
Secondary Liability:	See accountable person. If the beneficiary does not pay tax then Revenue can oblige someone who is secondarily liable to pay it, e.g. agent, trustee, personal representative, etc.
Secured Liabilities:	Liabilities that are secured on a specific property, e.g. mortgage.
Settlement:	The instrument by which land or other property is settled.
Settlor:	The person by whom a settlement of land or other property is made either by deed or will.
Situs Code:	A set of rules for determining the location of property for the purposes of establishing whether they fall to be taxed in a particular jurisdiction.
Stock in Trade:	Assets used in connection with a business, e.g. beer and spirits in a pub.
Strangers in blood:	Persons who have no tie between them by blood or valid marriage.
Subsidiary Taxing Rights:	Where Ireland and the UK claim tax on worldwide assets and property is located in a third country, the country with subsidiary taxing rights gives the credit for the tax charged in the third country. There are agreed rules for determining which country has subsidiary taxing rights.
Successor:	Person who receives an inheritance.
Survivorship:	The right of a person to property by reason of having survived another person who had an interest in it, e.g. on the death of a joint tenant the survivor inherits the property.
Specified Collective Undertaking:	Assets comprising a fund that is pooled and managed for the benefit of investors.
Tenancy in Common:	Is where two or more persons have undivided shares in property. On the death of a tenant in common his/her share goes to his/her successor in title and not to the surviving co-tenant.
Testator:	Person who makes a will.
Trust:	Legal mechanism by which property is held by one person on behalf of and for the benefit of another.
Trustee:	Person who holds property on trust for another.
Unilateral Relief:	Unilateral double taxation relief applies in respect of foreign tax where there is no tax treaty. It prevents tax being charged on the same property in two different countries.
Unquoted Shares/ Securities:	Private company shares which are not quoted on the stock market.
Unsecured Liabilities:	Liabilities that are not secured on any specific property.
Will:	A declaration by which a person (testator) provides for the distribution of his/her property after his/her death.

General

About This Guide

Gift and Inheritance tax is a Capital Acquisitions Tax (CAT).

This Guide is designed to help you to complete the Gift/Inheritance Tax Self - Assessment Return (Form IT38) in respect of gifts or inheritances taken on or after **5 December 2001**. If the gift or inheritance was taken prior to that date you should use the previous version of the Form IT38, which has its own (separate) guide to completion (booklet IT39).

In the event that a gift of foreign property is appointed out of a Discretionary Trust on or after 5 December 2001 and the trust was created prior to 1 December 1999 the old version of the form must be used as the old "domicile of disponer" rules apply to such a benefit.

Legislation

References to the Act and to the sections of the Act throughout the Return and this Guide, are unless otherwise stated, references to the Capital Acquisitions Tax Consolidation Act, 2003. This and all other Acts are available free of charge on the Office of the Attorney General website (**www.irishstatutebook.ie/front.html**). References throughout the Return and this Guide to benefits are references to Gifts or Inheritances. References to beneficiaries are references to donees or successors, as appropriate.

The expression "The State" in this Guide is to be interpreted, having regard to Article 3 of the Constitution, as referring to the area to which the laws of Ireland have application.

This Guide is intended for guidance only and is not a legal interpretation of the Act.

Layout and Approach

The Guide follows the same sequence and numbering system as the Return (Form IT38) and takes you step-by-step through each part of the return. It also explains key concepts along the way and gives a number of illustrative examples. In addition, a number of Appendices give more detailed notes and examples on issues of particular interest.

Further Information or Assistance

If you need further help in completing the return, or if you require some general information about Gift/Inheritance Tax or about specific reliefs, contact our CAT Taxpayer Information Service at

- 01 738 3673
- Website **www.revenue.ie**
- Address

National CAT Information Unit
Central Revenue Information Office
Cathedral Street
Dublin 1
D01 DC78

Revenue On-Line Service (ROS)

The Gift/Inheritance Tax return can also be filed electronically and payment made through ROS. ROS is available at **www.revenue.ie.**

The benefits of filing through ROS are:

- Speedier processing of tax returns and payments;
- More effective and efficient use of time;
- More accurate processing of returns;
- Reduction in compliance costs;
- Reduction in paper handling;
- 24 hour, 365-day access to Revenue;
- A quick and secure method of filing;
- Immediate acknowledgement of receipt of returns and payments.

How do I register for ROS?

Select the Revenue On-Line Service link from the Revenue homepage at **www.revenue.ie**. Click into "How to become a ROS customer" and follow the step-by-step instructions.

Important Preliminary Questions

What property is liable to Gift/Inheritance Tax?

All property in the State is liable to gift/inheritance tax.

Assets outside of the State are subject to gift/inheritance tax if:

- the disponer is resident or ordinarily resident in the State at the date of the disposition, or
- the beneficiary is resident or ordinarily resident in the State at the date of the gift or inheritance, or
- in the case of appointments of **gifts** out of discretionary trusts, the disponer is resident or ordinarily resident in the State at
  - (i) the date of the gift, or
  - (ii) the date of the disposition, i.e. the date the trust was created, or
  - (iii) in the case of a gift taken after the date of death of the disponer, at the date of his/her death.

Why do I need to make a return?

Essentially, you are obliged by law to make a return if the value of the gift or inheritance (either on its own or when added to other gifts or inheritances, taken from any source within the same **Group** threshold, on or after 5 December 1991) exceeds 80% of the tax-free threshold i.e. tax-free amount. Details of the **Group** thresholds are given on **Page 11** of these guidance notes. You must also make a return if required to do so by the Revenue Commissioners.

When do I have to make a return and pay the tax?

You must make a return and pay any tax due within four months of a date called the **valuation date.** This is the date on which the value of the gift or inheritance is calculated. In the case of a gift, it is the date of the gift; but in the case of an inheritance, it is the earliest of a number of possible dates and is not necessarily the date of death. How you determine the valuation date in the case of an inheritance is explained in detail in **Part 3.6, Page 14**.

Normally, any tax due is payable in full; however, there is provision for payment by instalments in certain circumstances. The instalments option is explained in **Part 8.10**, **Page 29**.

Who is responsible for making the return?

The primary responsibility for making the return and paying any tax due rests with the beneficiary (i.e. the person who receives the gift or inheritance). A number of other parties can have secondary liability, e.g. the personal representative in the case of an inheritance. In inheritance tax cases, the return is often filed, on behalf of the beneficiary, by the personal representative. In the case of a voluntary transfer (gift), the disponer, i.e. the person making the gift is secondarily liable.

What happens if the tax is not paid on time?

In general, the tax has to be paid within four months of the valuation date. If not paid on time, interest at the rate of 0.0322% per day is charged from the valuation date. Prior to 1 September 2002 the interest rate was 1% per month or part of a month. The implications of late payments are explained further in **Part 8.11, Page 30.**

What are the consequences of making an incorrect return?

All returns may be subject to Audit. If an audit reveals that the correct amount of tax has not been declared, any additional tax will be subject to interest and may also give rise to the charging of penalties. Revenue's Audit Code of Practice (which is available from public offices or Revenue's website) provides more information on all aspects of Revenue auditing.

Do I need to complete supplementary forms if I am claiming relief?

No. However, supporting documentation will have to be retained for six years in the event of the case being audited.

This section of the Guide follows the same sequence and numbering system as the Gift/Inheritance Tax Return (form IT38) and goes through the return step by step, explaining how to complete each element.

Part 1 The Disponer

1. PPS No.	☐☐☐☐☐☐☐ - ☐☐
2. Name	
Address	
3. Was the disponer resident or ordinarily resident in the State at the date of the disposition under which the gift/inheritance was taken by the beneficiary? (✓)	☐ Yes ☐ No
4. Domicile	

The Disponer is the person who provided the gift or inheritance. Depending on the circumstances,

- the disponer may be the donor, in the case of a gift;
- the deceased, in the case of an inheritance; or
- the settlor, in the case of an appointment from a trust fund.

1. PPS number

Enter the disponer's PPS number. The PPS number is the Personal Public Service number which has replaced the old RSI number. Lack of a PPS number will result in the return being returned to the executor/solicitor thereby causing delay in processing. It may also result in interest becoming payable.

PPS numbers (formerly RSI numbers) will normally be available from any documentation received either from the Inspector of Taxes (e.g. tax-free allowance certificate or notice of assessment) or from the Department of Social and Family Affairs.

Clients requiring PPS numbers can call into their nearest Department of Social and Family Affairs Local or Branch Office. They will be required to produce valid ID, e.g. long birth certificate and other supporting documentation.

Where a PPS number is required for a deceased person or a person who is resident abroad, solicitors or executors should contact Client Identity Services in the Department of Social and Family Affairs directly by fax at (01) 7043237 or telephone (01) 7043281. Identity information will be required before numbers can be issued.

2. Name and Address

Enter the disponer's full name and last known address.

3. Was the disponer resident or ordinarily resident in the State at the date of the disposition under which the gift/inheritance was taken by the beneficiary?

Indicate by ticking (✓) "yes" or "no" as appropriate. All property, wherever situate, is subject to Capital Acquisitions Tax if either the disponer or beneficiary are resident or ordinarily resident in the State at the date of the benefit. However, in the case of foreign domiciled persons transitional arrangements apply until 1 December 2004. This means that where the disponer or the beneficiary is foreign domiciled at the date of the benefit and the benefit is taken prior to 1 December 2004 then he/she will not be treated as resident or ordinarily resident in the State.

With effect from 1 December 2004, a foreign domiciled person will not be considered resident or ordinarily resident in the State unless he/she was resident for the five consecutive years of assessment preceding the date of the benefit and on that date is either resident or ordinarily resident in the State. (See table at Appendix 10 setting out the tax implications in relation to foreign property before 1 December 2004).

Note: Particular attention is drawn to an exception to the above rules in respect of inheritances taken from U.S. domiciled disponers. Where a disponer dies domiciled in any of the States of the U.S.A., no liability to inheritance tax arises in respect of foreign property.

4. Domicile

Enter the domicile of the disponer at the date of the gift/inheritance.

Domicile is a concept of general law which is distinct from nationality or residence. A person may be resident in more than one country, but, generally, at any given time can be domiciled in only one.

When an individual is born he acquires a domicile of origin and this remains with him throughout his life unless it is replaced by a domicile of choice by moving to another country with the intention of residing there permanently.

If a domicile of choice lapses as a result of permanently leaving the country in which the domicile of choice exists the domicile of origin is re-activated until replaced by another domicile of choice.

It should be noted that the U.S.A. is not a recognised domicile area. Each State of the United States of America is a separate domicile area. If the deceased died domiciled in one of the States of the U.S.A., enter the name of that State.

Part 2 The Beneficiary

1. PPS No.					
2. Name					
Address					
3. Was the beneficiary resident or ordinarily resident in the State at the date of gift/inheritance?(✓)		☐	Yes	☐	No
4. Domicile					
5. Relationship to disponer					
6. Is favourite nephew/niece relief claimed?(✓)		☐	Yes	☐	No
7. Is foster child relief claimed?(✓)		☐	Yes	☐	No

The Beneficiary is the person who receives the gift or inheritance. In the case of a gift, the beneficiary is called the "donee"; in the case of an inheritance, the beneficiary is called the "successor".

1. PPS number

Enter the PPS number (see notes in Part 1 in relation to the disponer's PPS number).

2. Name and Address

Enter the full name of the beneficiary and last known address.

3. Was the beneficiary resident or ordinarily resident in the State at the date of the gift/inheritance?

Indicate by ticking (✓) "yes" or "no" as appropriate.

4. Domicile

Enter the domicile of the beneficiary at the date of the gift/inheritance.

5. Relationship to disponer

Enter the relationship of the beneficiary to the disponer as at the date of the gift/inheritance. Note that where the benefit is taken on the death of a life tenant under a settlement, it is the beneficiary's relationship to the disponer, i.e. the settlor, which must be entered here and not the relationship to the life tenant. Please be specific when answering this section e.g. "child of disponer's brother or sister" should be used instead of simply "nephew" or "niece".

The relationship types are:

- Child;
- Brother;
- Sister;
- Parent;
- Grandchild;
- Great-grandchild;
- Grandparent;
- Child of a brother or sister;
- Minor child of a deceased child of the disponer;
- Stranger in blood.

The relationship to the disponer is important in determining the appropriate "group threshold".

Notes on Relationships, Group Thresholds and Indexation.

Group Thresholds

The relationship between the disponer and the beneficiary at the date of the Gift or Inheritance determines the maximum tax free threshold - known as the group " threshold ".

The group thresholds applicable are -

	2003	2002	2001
Group A	€ 441,198	€ 422,148	€ 402,253
Group B	€ 44,120	€ 42,215	€ 40,225
Group C	€ 22,060	€ 21,108	€ 20,113

The group thresholds are indexed on the 1st January each year by reference to the consumer price index. The revised indexed group thresholds for following years can be obtained by contacting our Taxpayer Information Service or by checking Revenue's website.

Group A

The Group A threshold applies where the beneficiary is -

- a child, or a minor child of a deceased child of the disponer.

The term "child" includes a stepchild or an adopted child (under the Adoption Acts).

Minor means under the age of 18.

A **foster child** will also qualify for the Group A threshold in respect of a benefit taken on or after 6 December 2000 if he/she had been cared for and maintained, at the disponer's own expense, from a young age up to the age of 18 for period(s) amounting to at least five years and has also resided with the disponer. The 5 year requirement will not apply in the case of a formal fostering under the relevant Child Care Regulations where the foster child **inherits on the death of a foster parent.**

Claims for the relief by a foster child will have to be supported by the testimony of two witnesses.

Parents taking an absolute inheritance from a child have a Group A threshold. However, if the child took a non-exempt gift or inheritance from either parent in the previous five years, any inheritance taken by a parent from that child is exempt.

Group B

The Group B threshold applies where the beneficiary is -

- a lineal ancestor e.g. * parent or grandparent (* parent takes a Group B threshold where they take a gift or a limited interest in an inheritance);
- a lineal descendant e.g. a grandchild or great-grandchild;
- a brother or sister;
- a child of a brother or sister of the disponer.

Group C

The Group C threshold applies to "strangers" i.e. where the relationship between disponer and beneficiary falls outside either Group A or Group B.

Some Additional Points

- Gifts or Inheritances taken from a **Spouse** are entirely exempt - regardless of the amount involved.
- In certain circumstances, the beneficiary may take the threshold of his/her deceased spouse where that spouse has pre-deceased the disponer and was of a nearer relationship to the disponer, e.g. a daughter-in-law of the disponer can qualify for the Group A (rather than the Group C) threshold if her husband predeceased the disponer.

Example

On the death of Mary Smyth in September 2002 her entire estate (valued €500,000) was left to her daughter-in-law, Anne Smyth. Anne's husband, Thomas had predeceased his mother. In these circumstances, the class threshold that applies to the benefit is €422,148 (Group A) and not €21,108 (Group C).

- In certain circumstances, a grandchild can qualify for Group A threshold (rather than Group B) if the benefit is taken on the death of the beneficiary's surviving parent under a disposition made pre 1 April 1975 where the consideration for the disposition was the marriage of the parents of the beneficiary. The disponer is a grandparent of the beneficiary.
- An adopted child taking Gifts or Inheritances from a natural parent is entitled to a Group A threshold. He/she is also entitled to a Group A threshold from his/her adoptive parents.

6. Is favourite nephew/niece relief claimed?

Indicate by ticking (✓) "yes" or "no" as appropriate.

Favourite Nephew/Niece relief entitles a beneficiary who is a nephew or niece of the disponer to be treated as a "child" of the disponer provided certain conditions are met. A detailed explanation on Favourite Nephew/Niece relief and an example of how it is calculated is included at **Appendix I**, **Page 39**.

7. Is foster child relief claimed?

Indicate by ticking (✓) "yes" or "no" as appropriate. See note on Foster Child Relief at Group A threshold at 5 above.

Expression of Doubt

Expression of Doubt - if you are unsure about the tax treatment of any item in this return please tick(✓) this box ☐ and attach a covering letter setting out clearly the point at issue.

Indicate by ticking (✓) the box if you are unsure of the tax treatment of any item in the return. If yes, please attach a covering letter setting out clearly:

- the full details of the circumstances of the issue in doubt;
- the amount of tax in doubt;
- make reference to the provisions of law giving rise to the doubt.

In addition, the covering letter must be accompanied by any relevant supporting documentation.

If the expression of doubt is accepted by Revenue as genuine, interest will not be chargeable on any additional tax arising.

The following rules apply to "expression of doubt" cases:

- an expression of doubt cannot be accepted if the return is not lodged in time;
- an acknowledgement of receipt of an expression of doubt will be issued immediately and this acknowledgment must be retained by the taxpayer as part of his/her records;
- a letter of expression of doubt shall not be deemed to be made unless it has been acknowledged by Revenue;
- if the expression of doubt is not accepted as genuine, the taxpayer will be advised accordingly in writing and interest will be payable on any additional tax due;
- if the expression of doubt is accepted as genuine, Revenue will make a ruling on the correct treatment of the transaction. If, as a result, additional tax is due, no interest will be chargeable if the tax is discharged within one month;
- the use of the expression of doubt facility will not result in a case being more likely to be selected for audit;
- the law provides that Revenue will not accept an expression of doubt as genuine where:
  - (i) they have issued general guidelines, e. g. Guide to Capital Acquisitions Tax, Statements of Practice, Information Leaflets, Notes for Guidance, Freedom of Information Precedents Database about the application of law in similar circumstances;
  - (ii) are of the opinion the matter is otherwise sufficiently free from doubt as not to warrant an expression of doubt;
  - (iii) the opinion that the taxpayer was acting with a view to the evasion or avoidance of tax.

Part 3 Nature Of Benefit/Relevant Dates

1. Is the benefit a gift or an inheritance?(✓) ☐ Gift ☐ Inheritance

2. How (under what disposition) did the benefit arise?(✓) ☐ Will ☐ Intestacy ☐ Survivorship ☐ Deed ☐ Other (specify)__________

3. Date of gift/inheritance DD/ MM/ YYYY

4. Date of disponer's death (if applicable) DD/ MM/ YYYY

5. Date of grant (if disposition is will/intestacy) DD/ MM/ YYYY

6. Valuation date DD/ MM/ YYYY

7. Is the benefit wholly or partly a limited interest?(✓) ☐ Yes ☐ No

If yes, state
(a) gender of any person for whose life the interest is taken (✓) ☐ Male ☐ Female
(b) the date of birth of any person for whose life the interest is taken . . . .
(c) the duration of any period certain for which the interest is taken . . . .
(d) the age factor or other statutory multiplier . . . . 0 . ☐☐☐☐

1. Is the benefit a gift or an inheritance?

Indicate, by ticking (✓) the appropriate box, whether the benefit is a gift or an inheritance.

In general, a person is deemed to take a gift where he/she becomes **beneficially entitled in possession** to any benefit for less than full consideration in money or money's worth and there is no death involved.

In the case of an inheritance, a person is deemed to take an inheritance where he/she becomes **beneficially entitled in possession** to any benefit for less than full consideration in money or money's worth and it is taken on a death. It is important to remember that the "death" concerned need not be the disponer's death. Where a benefit is taken on the death of a person or by reference to the death of a person it is an inheritance, e.g. on the death of a life tenant.

The first €3,000 (€1,270 prior to 1 January 2003) of any gift is exempt from CAT (Section 69 of the Act refers). See also **Part 7, Page 25**.

Both Gift Tax and Inheritance Tax is chargeable at 20%.

2. How (under what disposition) did the benefit arise?

Indicate by ticking (✓) the appropriate box the type of disposition or if other, please specify.

This question identifies a number of the more common types of disposition under which benefits can arise and which can give rise to a charge to CAT, i.e.

- will,
- intestacy,
- by survivorship (in the case of a joint tenancy),
- deed.

There are many other less common types of disposition, e.g. nomination and space is provided for the appropriate disposition to be described.

3. Date of gift/inheritance

Insert the date of the gift or inheritance.

The date of gift is the date of the happening of the event upon which the beneficiary becomes "beneficially entitled in possession" to the benefit. Usually this will simply be the date the gift is received.

The date of inheritance is normally the date of death of the testator, intestate or life tenant on whose death the inheritance is taken. Where an inheritance arises under an intestacy or is granted immediately by will (whether as a legacy, devise or residue), the date of inheritance is the date of death of the disponer. If the inheritance is taken on the death of a life tenant, the date of inheritance is the date of death of the life tenant.

4. Date of disponer's death (if applicable)

Enter the date of death of the disponer.

5. Date of grant (if disposition is will/intestacy)

Enter the date of Grant of Probate or Administration if the grant has been obtained. An Inland Revenue Affidavit, Form C.A.24, must be completed by the personal representative and forwarded to the Revenue Commissioners for certification as a preliminary step towards obtaining a Grant of Representation from the Probate Office of the High Court in respect of the estate of a deceased person.

6. Valuation date

Insert the valuation date.

The valuation date is the date on which the market value of the property comprising the gift/inheritance is established. In the case of a Gift, the Valuation Date is normally the date of the gift.

In the case of an Inheritance, the Valuation Date is normally the **earliest** of the following dates:

- the date the subject matter of the inheritance can be retained for the benefit of the beneficiary;
- the date it is actually retained for the benefit of the beneficiary;
- the date it is transferred or paid over to the beneficiary.
- The Valuation Date will normally be the date of death in the following circumstances:
- gift made in contemplation of death (Donatio Mortis Causa);
- where a power of revocation has not been exercised;
- where property passes by survivorship or under a trust.

The following examples illustrate the Valuation Date for various benefits.

Example 1

Valuation Date of an inheritance taken under a Will

Mr. O'Toole in his will left the following property absolutely:

(a) his house to his sister, Anne, who was residing with him;

(b) €50,000 pecuniary legacy, to his nephew, Brendan;

(c) the residue of his estate, consisting of quoted shares and bank accounts, to his brother Charles.

The Valuation Date for each inheritance would normally be -

- the date of death in respect of the house (Anne is living in house already);
- the date of grant of probate in respect of the pecuniary legacy (if the legacy was paid to Brendan prior to that date, the date of payment would be the valuation date);
- the date of grant of probate in respect of the residue.

Example 2

Valuation Date of Inheritance taken under an Intestacy

In the case of an intestacy, the Valuation Date of each inheritance taken by the next-of-kin would normally be the date of grant of administration.

Example 3

Valuation Date of Gift and Inheritance taken under a Deed

Joe Murphy, on his retirement from farming, executed a deed transferring his lands as follows:

(a) to his sister Margaret, for her life (this is a gift);

(b) on her death to his nephew John absolutely (this will be an inheritance taken from his uncle Joe on Margaret's death).

The respective Valuation Dates are as follows:

- the date of the deed in respect of the gift of a life interest to Margaret;
- the date of Margaret's death in the case of the inheritance taken by John.

Importance of Valuation Date

- The market value of the property, the subject of the benefit, is ascertained as at the valuation date.
- Tax is due and payable on the valuation date. However there is a period of grace and no interest will be incurred if the tax is paid within four months of the valuation date.
- If the tax is being paid by statutory instalments, the first instalment is due one year after the valuation date.
- Tax becomes a charge on property on the valuation date.
- The farmer percentage test, i.e. 80% test for agricultural relief, is carried out at the valuation date (**see Appendix A, Page 33**).

Note: The legislation provides that the relevant group thresholds, rates of tax, reliefs, etc. used to determine a beneficiary's tax liability are those pertaining at the date of benefit and not the valuation date.

7. Is the benefit wholly or partly a limited interest?

Indicate by ticking (✓) "yes" or "no" as appropriate.

If the benefit, or part of the benefit, confers less than absolute ownership on the beneficiary, this should be indicated by ticking the "yes" box and completing parts (a), (b) or (c) as appropriate and inserting the relevant factor at (d). The relevant factor is a mathematical figure which is intended to reflect the actuarial value of the benefit based on the beneficiary's age and gender.

The rules for valuing limited interests are contained in Schedule 1 of the Act and are reproduced in **Appendix 7, Page 59** of this guide. Table A of the Schedule applies to life interests and Table B to interests taken for a period certain.

If yes, state

(a) **gender of any person for whose life the interest is taken?** - Indicate by ticking (✓) the appropriate box the gender of the person for whose life the interest is taken.

(b) **the date of birth of any person for whose life the interest is taken** - Insert the date of birth of the person for whose life the interest is taken. This will normally be the date of birth of the beneficiary but it could be some other person's date of birth if the interest is to cease on that other person's death.

Example

Frank inherits a house for his life. He is aged 50 years at the valuation date. The age is determined by the previous birthday. Note that it is the age of the beneficiary at the valuation date that is relevant. The age factor appropriate to a male aged 50 is obtained from Part2, Table A, column 3 and is 0.7287 and this factor should be inserted at (d). (If the beneficiary was female, the age factor would be found in column 4 of the Table).

(c) **the duration of any period certain for which the interest is taken** - Insert here the length of time for which the interest is taken e.g. if Mary covenants to pay her nephew Michael €5,000 p.a. for 10 years, "10 years" should be inserted in the box.

Example

Joan takes an interest in property for a period of 10 years. The appropriate multiplier for a 10 year interest is obtained from Part 3, Table B, column 2 and is 0.4913 and this factor should be inserted at (d).

(d) **the age factor or other statutory multiplier** - Insert the relevant factor (multiplier). If the interest taken is a life interest, insert the age factor appropriate to the beneficiary's age and gender from **Table A, Appendix 7 Page 63**.

If, the interest is for a period certain, insert the factor from **Table B, Appendix 7, Page 65** appropriate to the particular period of time.

In the event that the limited interest taken is for other than a single life interest, e.g. for the joint continuance of two lives, details of the age and sex of all persons should be furnished on a separate sheet.

A detailed note on the rules, together with examples, for all limited interests are set out in **Appendix 7, Page 59**.

If no - Proceed to Part 4.

Part 4 Other Relevant Information

1. **For inheritance tax only** - was the inheritance taken on the death of a person other than the disponer?(✓) ☐ Yes ☐ No

   If yes, state (a) that person's name [ ] and (b) date of death DD/ MM/ YYYY

2. **For gift tax only** - did the disponer take any gift within 3 years prior to, or since, the date of gift entered in Part 3 above?(✓) ☐ Yes ☐ No

3. Is all or any part of the tax being paid out of the proceeds of a section 72/73 policy? (✓) ☐ Yes ☐ No

   If yes, (a) enter proceeds of policy . . . . €

   (b) state amount of proceeds being used to pay the tax in this return . . . . €

   (c) state amount of any excess taken by this beneficiary . . . . €

4. Is all or any part of the tax being paid by the disponer? (✓) ☐ Yes ☐ No

   If yes, state amount €

1. For inheritance tax only - was the inheritance taken on the death of a person other than the disponer?

Indicate by ticking (✓) " yes" or "no" as appropriate.

The purpose of this question is to establish on whose death the inheritance is taken.

If yes, state (a) that person's name and (b) date of death - If the answer to the question is "yes" insert that person's name and date of death in the appropriate box.

This is relevant, for example, where under a settlement made by will, property passes to a person for life and thereafter to another person absolutely. When the life tenant dies, the current beneficiary takes the property as an inheritance from the disponer, i.e. the deceased settlor and not from the life tenant. In such a case, information is required to establish the correct date of inheritance, i.e. the date of death of the life tenant, which determines among other things, the date on which the property falls to be valued, the indexed group threshold which applies and certain qualifying criteria for any reliefs which may apply to the current benefit.

2. For gift tax only - did the disponer take any gift within 3 years prior to, or since, the date of gift entered in Part 3 above?

Indicate by ticking (✓) "yes" or "no" as appropriate.

This question relates to an anti-avoidance provision in section 8 of the Act, which is designed to prevent "gift splitting".

Gift-splitting is best explained by way of an illustration. Where Disponer (B) makes a gift to Beneficiary (C) and in the three years prior to or since making the gift to Beneficiary (C), Disponer (B) had taken a gift from another disponer, Disponer (A), then the gift taken by (C) is deemed to have been taken from (A) and not (B).

Example

In January 2002 a father, Disponer (A), gifts to his son (B) €500,000. In October 2002 the son, Disponer (B), gifts to his wife, Beneficiary (C), a house valued at €500,000. The wife, Beneficiary (C), is deemed to take the gift of the house from her father-in-law, Disponer (A) and not from her husband, Disponer (B).

In the above example, in the absence of this anti-avoidance provision, the gift by (B) to his wife (C) would be exempt from tax, even though, in reality she is taking the gift from her father-in-law (A).

However, where it can be shown to the satisfaction of the Revenue Commissioners that the gift in January 2002 was not made with a view to facilitating the making of the October 2002 gift, the October gift is treated as being made by (B), the spouse of (C).

A typical example of this scenario would be as follows:

Father transfers house to married son in May 2002. Son requires a mortgage to renovate the house or to build an extension. The lending institution would probably insist on the house being placed in the joint names of the son and his wife before advancing the loan. The son transfers a half share of the house into his wife's name in June 2002. Under the provisions of section 8, the wife would be deemed to take the half share of the house from her father-in-law but in these circumstances Revenue would most probably accept that the first gift, i.e. transfer from father to son was not made to facilitate the second transfer, i.e. son to spouse.

3. Is all or any part of the tax being paid out of the proceeds of a section 72/73 policy?

Indicate by ticking (✓) "yes" or "no" as appropriate.

The proceeds of certain insurance policies are exempt to the extent that they are used to pay gift/inheritance tax.

If yes

(a) **enter proceeds of policy** €- Enter the amount to be paid out on the policy.

(b) **state amount of proceeds being used to pay the tax in this return** € - Enter the amount of the proceeds being used to pay the tax due on this return (this is only possible when the tax liability is calculated).

(c) **state amount of any excess taken by this beneficiary** € - Enter the amount of any excess of the policy proceeds taken by the beneficiary which is not being used to pay the tax (again only possible when the tax liability has been calculated).

Section 72 and 73 policies are special insurance policies taken out specifically to be used to discharge Inheritance Tax (section 72) and Gift Tax (section 73) although there is a certain amount of interchangeability between the reliefs applicable to both policies. The proceeds of the policies, in so far as they are used to discharge any gift or inheritance tax, are not themselves liable to tax. However, if there is any part of the proceeds remaining after the tax liability has been discharged, this excess is liable to gift/inheritance tax at 20%.

Section 72 provides for the exemption of the proceeds of certain qualifying policies in so far as the proceeds are used for the payment of inheritance tax arising on the insured person's death or within a year of his/her death.

A qualifying insurance policy is a policy of insurance:

- which is in a form approved by the Revenue Commissioners;
- in respect of which annual premiums are paid by the insured during his/her life (note that a single premium policy would not qualify);
- which is expressly effected under this section for the purpose of paying relevant tax.

"Relevant tax" means inheritance tax payable in respect of an inheritance taken under a disposition made by the insured where the date of inheritance is the date of death of the insured or within one year of the death. Relevant tax includes inheritance tax payable on property passing by survivorship or nomination as well as property passing under a will or intestacy.

As well as a single life policy, Section 72 policies can be effected by two spouses, the proceeds of which are payable on the death of the survivor of the spouses or on the simultaneous death of both. A life tenant can also effect a policy to cover the tax arising on his/her death under a disposition made by the original disponer.

Example

John dies in 2002 and leaves his net estate valued €1,000,000 in equal shares between his two sisters Mary and Clare who inherit €500,000 each. At his death, he also had a qualifying insurance policy of €200,000.

Beneficiary	Inheritance	Threshold	Tax	Policy Proceeds	Excess	Excess Taxed at 20%
Mary	€500,000	€42,215	€91,557	€100,000	€8,443	€1,688.60
Clare	€500,000	€42,215	€91,557	€100,000	€8,443	€1,688.60

Section 73 provides for the exemption of the proceeds of certain qualifying policies that are used to pay gift or inheritance tax arising in connection with a gift made by the insured. The gift must be made within one year of the proceeds of the policy becoming payable.

A qualifying insurance policy is a policy of insurance:

- which is in a form approved by the Revenue Commissioners;
- in respect of which annual premiums are paid by the insured;
- in respect of which there must be a minimum eight year funding period. However, the proceeds can be used at any time during this period if the insured dies or becomes critically ill;
- which is expressly effected under this section for the purpose of paying relevant tax;
- the proceeds of which are payable on the appointed date.

The "appointed date" is a date at least eight years after the date on which the policy was taken out or where the insured becomes critically ill or dies before that date.

For further information on sections 72 and 73 policies please refer to the Statement of Practice (SP-CAT/2/91).

4. Is all or any part of the tax being paid by the disponer?

Indicate by ticking (✓) "yes" or "no", as appropriate. Please see note in **Appendix 8. 7, Page 69** re. calculation of "tax free" benefits.

If yes, state amount € - Enter amount of tax being paid by the disponer (this is only possible when the tax liability has been calculated).

Name and Address of person to whom correspondence should be addressed - Enter name and address of person to whom correspondence should be addressed.

Agent's code -
Enter the agent's code.

Agent's ref. no. -
Enter agent's reference number.

Agent's tel. number -
Enter agent's tel. number.

Name and address of the person to whom correspondence should be addressed

Further assistance in completing the return can be obtained by contacting the

National CAT Information Unit
Central Revenue Information Office
Cathedral Street, Dublin 1
D01 DC78

Tel. 01 738 3673

Agent's code ____________

Agent's ref. no____________

Agent's tel. no.____________

Part 5 Details of Benefit

Particulars of the property comprising the gift/inheritance at the valuation date

Layout of Benefit

In Part 5, you are required to classify the different types of property that comprise the benefit according to the following categories, where applicable,

- **Panel A** - Agricultural property to which Agricultural Relief applies,
- **Panel B** - Business property to which Business Relief applies, and
- **Panel C** - All other property, i.e. property other than that included in Panel A and Panel B.

The values to be included are the market values of the property at the valuation date. (see Part 3.6 for an explanation of Valuation Date).

Completing Part 5

Panel A - Agricultural property (include only property to which agricultural relief applies).

Particulars of the property comprising the gift/inheritance at the valuation date

PANEL A

Agricultural property (include only property to which agricultural relief applies) **(Note: Page 5, Appendix A must also be completed)**	€
Total A	€

Before completing Panel A, make sure that the agricultural property in question qualifies for relief under the provisions of Section 89 of the Act. Details of this relief (with examples) are set out in **Appendix 2, Page 41**. If the agricultural property does not qualify for relief, it should be included in Panel C (all other property). However, agricultural property may qualify for business relief in certain circumstances and in that event it should be included in Panel B.

Enter details of the agricultural assets and the market value at the valuation date of each asset. Enter the total market value of the agricultural assets at **Total A**.

In describing the agricultural property a broad classification will suffice. For example:

- farmlands and buildings €500,000
- livestock €100,000
- farm machinery € 50,000

Note that the market value to be included at the valuation date is the full market value, i.e. before deducting agricultural relief.

If agricultural relief is being claimed, **Appendix A, (Page 5)** of the return must be completed. The taxable value of the agricultural property is calculated at Appendix A. The farmer percentage test is also completed at Appendix A.

Panel B - Business property (include only relevant business property and exclude any business assets which qualify for agricultural relief)

PANEL B

Business property (include only relevant business property and exclude any business assets which qualify for agricultural relief) **(Note: Page 6, Appendix B must also be completed)**	€
Total B	€

Before completing Panel B, make sure that the business property in question qualifies as relevant business property under the provisions of Section 93 of the Act. Details of business relief are set out in **Appendix 3, Page 46**. If the business property does not qualify for relief it should be included in Panel C (all other property).

Enter details of the business assets and the market value of each asset. Enter the total market value of the business assets at **Total B**. Note that any business assets which qualify for Agricultural relief should not be included in Panel B. Instead these assets should be included in Panel A.

In describing relevant business property a broad classification will suffice. For example:

- 300 € 1 ordinary shares in ABC Ltd. €500,000
- partnership share in Y & Co. €100,000

Note that the market value to be included at the valuation date is the full market value i.e before deducting business relief.

If business relief is being claimed, **Appendix B, (Page 6)** of the return must be completed. The taxable value of the business property is calculated at Appendix B.

Panel C - All other property.

PANEL C	
All other property	€
Total C	€

Enter here the market value (at the valuation date) and particulars of all property other than property qualifying for Agricultural and/or Business Relief. Enter the total market value of all other property at **Total C**.

In giving particulars, please be as specific as possible. For example:

- dwelling-house €300,000
- proceeds of XYZ insurance policy € 50,000
- shares in ABC Ltd. €150,000
- deposit account EFG Bank. € 10,000

If the space provided is inadequate, attach a separate schedule.

Particular Types of Benefit

Certain types of benefits can give rise to difficulties in calculating their market value. These are:

- benefits which consist of a right, an annuity or other periodic payment, e.g. a right of residence, support or maintenance;
- benefits arising by reason of rights coming to an end;
- benefits relating to the free-use of property;
- benefits arising on failure to exercise powers of revocation;
- benefits which are subject to contingencies; and
- "tax-free" benefits.

Detailed notes, with examples, on how to deal with these situations are set out in **Appendix 8, Pages 66 to 70**.

Part 6 Liabilities, Costs, Consideration, Etc.

Certain deductions are permitted in arriving at the taxable value of the benefit. The legislation refers to liabilities, costs and expenses "properly payable" out of the benefit. This, in effect, means debts which are legally enforceable and which are payable out of the benefit or because of it. In the case of an inheritance, the debts in question are normally those owed by the deceased at the date of death together with funeral expenses and the costs of administering the estate. In the case of gifts, it is mainly stamp duty and legal costs which are involved.

Certain liabilities, costs and expenses are not deductible. These include debts incurred by the beneficiary or in respect of which the beneficiary can claim reimbursement, debts payable at an uncertain date in the future (an adjustment is made when these debts are actually paid), certain liabilities relating to foreign property where only the Irish property is taxable and debts relating to exempt property.

Consideration paid by the beneficiary for the benefit is deductible in calculating the taxable value. Consideration may take many forms - a part payment, a liability of the disponer which the beneficiary undertakes to discharge, an annuity payable to the disponer or to some other person.

Completing Part 6

Panel A. - Liabilities, costs and expenses properly payable out of benefit.

PANEL A	
Liabilities, costs and expenses properly payable out of the benefit	€
Total A	€

Enter any liabilities, costs and expenses payable out of the benefit, the amount of such liability and enter the total of the liabilities at **Total A**.

In the case of an inheritance these liabilities etc. may include:

- funeral expenses;
- testamentary expenses, e.g. legal costs, probate fees;
- pre-death liabilities of the disponer , e.g. bank overdraft, mortgage.

In the case of a gift, these would normally include:

- Stamp Duty;
- legal costs.

Points to Note

- Deductions in respect of services rendered on behalf of the disponer, e.g. wages, looking after while ill, taking to shops/church (sometimes referred to as "quantum meruit" claims) **will not** be allowed unless the claim can be supported by evidence of a legally enforceable agreement for the payment of the sum claimed.
- Where a liability is to be paid at a future certain date, it must be discounted to reflect its value at the valuation date.

Example

John gifts his house to Tom on 1 January 2003 provided he pays €20,000 to Mary on 1 January 2005. As the valuation date is 1 January 2003, i.e. the date of the gift the future payment of €20,000 to Mary must be discounted to take account of the fact that it will not be paid until two years after the gift. The amount of the discount will have to be actuarially calculated and agreed with Capital Taxes Division.

- A debt for which the disponer was merely a guarantor should not be deducted unless it has been paid and reimbursement cannot be obtained from the principal debtor.
- Where the beneficiary is deprived, in whole or in part, of the full use and enjoyment of, or the income from the benefit, a deduction may be made. The method of calculating the amount of the deduction is the same as that in **Example 1, Appendix 8, Page 66** In this example Tom has to provide a right of residence for her life for Mary out of his benefit. In the example the value of this right has been calculated as €20,000 and this is the amount to be entered in Part 6, Panel A.

Panel B. - Consideration paid for the benefit

PANEL B	
Consideration paid for the benefit	€
Total B	€

Enter particulars of any consideration paid by the beneficiary for the inheritance or gift and enter the total consideration paid at **Total B**.

Example

Mr. Byrne directs by will that his son Michael should inherit his dwelling-house valued at €500,000 with a mortgage of €80,000 and subject to the payment of €50,000 to his daughter Siobhan. The payment of €50,000 would be regarded as bona fide consideration for the inheritance.

Enter the market value of the house, i.e. €500,000 at Page 2, Part 5, Panel C.

Enter the value of the mortgage, i.e. €80,000 at Page 2, Part 6, Panel A.

Enter the value of the consideration, i.e. €50,000 at Page 2, Part 6, Panel B.

Part 7 Taxable Value of Benefit

PART 7 TAXABLE VALUE OF BENEFIT

	COLUMN C Amount of Relief	COLUMN A Absolute Interest	COLUMN B Limited Interest
Market value of property on Page 2, Part 5, Total C		A1 €	B1 €
Reliefs/exemptions claimed (other than agricultural/business relief)			
(a) Dwelling-house exemption If yes, state the date of birth of beneficiary DD/ MM/ YYYY	€		
(b) Heritage property exemption	€		
(c) Other (specify)	€		
Total reliefs/exemptions		A2 €	B2 €
Value after reliefs/exemptions (subtract item A2 from item A1 and/or item B2 from item B1)		A3 €	B3 €
Liabilities, costs and expenses (you may need to apportion Page 2, Part 6, Total A if reliefs or exemptions are being claimed)		A4 €	B4 €
Incumbrance free value (subtract item A4 from item A3 and/or item B4 from item B3)		A5 €	B5 €
Value of limited interest i.e. item B5 x relevant factor 0 .			B6 €
Consideration (you may need to apportion Page 2, Part 6, Total B if reliefs or exemptions are being claimed)		A6 €	B7 €
Taxable value (Column A: subtract item A6 from item A5) (Column B: subtract item B7 from item B6)		A7 €	B8 €

Taxable value of property (add item A7 to item B8)	9 €
Taxable value of agricultural property (Page 5, Appendix A, Panel 2, item 9)	10 €
Taxable value of business property (Page 6, Appendix B, Panel 2, item 12)	11 €
Taxable value of all property (add items 9, 10 and 11)	12 €
Deduct small gift exemption (where relevant)	13 €
Taxable value of benefit (subtract item 13 from item 12)	14 €

3

Layout and Approach

In Part 7, the taxable value of the benefit is calculated by reducing the market value of the benefit by certain allowable deductions.

In Part 5 - Details of Benefit - the property comprising the benefit was split into three distinct categories :

- Panel A - Agricultural property (to which Agricultural Relief applies),
- Panel B - Business property (to which Business Relief applies),
- Panel C - All other property, i.e. property other than that included in Panels A or B.

The approach taken in Part 7 of the return is as follows:

- the taxable value of the property in Panel C (i.e. "all other property") is calculated at Items A1/B1 to 9;
- the taxable value of Agricultural Property (to which Agricultural Relief applies) is calculated separately at Appendix A and entered at Item 10;
- the taxable value of Business Property (to which Business Relief applies) is calculated separately at Appendix B and entered at Item 11.

Part 7 has three columns, Column A, for an absolute interest, Column B, for a limited interest. This separation is necessary because the calculations of the taxable value of absolute and limited interests are different (see B6 below). Where the benefit comprises both an absolute and a limited interest, their taxable values are added together at item 9 to give the total taxable value of "All other property".

A detailed note on limited interests together with examples is set out in **Appendix 7, Page 59**.

The third column, i.e. Column C, relates to the amount of the various reliefs claimed other than Agricultural/Business Relief.

Completing Part 7

Market value of property on Page 2, Part 5, Total C - Enter the total market value of all other property, i.e. total taken from Page 2, Part 5, Panel C. If the interest taken by the beneficiary is an absolute interest, enter it at A1. If the interest taken by the beneficiary is a limited interest, i.e. a life interest or an interest for a period certain, enter it at B1.

Example

John inherits a life interest in a house and €5,000 absolutely. The market value of the house is €200,000.

In completing Part 7 of the return, the €5,000 (absolute interest) will be entered at A1 and €200,000, (the full market value of the house in which the limited interest is taken) will be entered at B1.

Reliefs/exemptions claimed (other than agricultural/business relief)

(a) Dwelling - house exemption

(b) Heritage property exemption

(c) Other (specify)

(a) Dwelling-house exemption - If the beneficiary is claiming Dwelling-house exemption, please enter in Column C (a) the value of the dwelling-house. The date of birth of the beneficiary must also be entered in the space provided at (a). A detailed note on Dwelling-house exemption is included at **Appendix 4, Page 53**.

(b) Heritage property exemption - If the beneficiary is claiming Heritage Property exemption, please enter in Column C(b) the value of the property. A detailed note on Heritage Property exemption is included at **Appendix 5 Page 54**.

(c) Other (specify) - If any other relief or exemption is being claimed, please specify the relief/exemption in the space provided at (c) and enter the amount of relief/exemption claimed in Column C.

The "other" reliefs and exemptions which may be claimed at (c) are:

- exemption of certain policies of assurance under Section 74 of the Act;
- exemption of specified collective investment undertakings under Section 75 of the Act;
- exemption of certain inheritances taken by parents under Section 79 of the Act;
- exemption in respect of certain Government securities under Section 81 of the Act;
- exemption relating to qualifying expenses of incapacitated persons under Section 84 of the Act;
- exemption in relation to retirement benefits under Section 85 of the Act.

A detailed note on these reliefs/exemptions and others, is included in **Appendix 6, Page 56**.

Total reliefs/exemptions - The total of the reliefs and exemptions claimed at Column C should be entered at A2 and/or B2, as appropriate.

In the event of a return being selected for audit, the claim to relief/exemption must be substantiated.

Value after reliefs/exemptions (subtract item A2 from item A1and/or item B2 from item B1)- Deduct the total value of the reliefs/exemptions from the market value of the property and enter the result at either A3 and/or B3 as appropriate.

Liabilities, costs and expenses (you may need to apportion Page 2, Part 6, Total A if reliefs or exemptions are being claimed) - Enter the liabilities, costs and expenses deductible, having apportioned if necessary, at A4 and/or B4 as appropriate.

In general liabilities etc. which are unsecured are payable rateably over the entire property comprised in the benefit. Apportionment of liabilities etc. will be necessary if any assets from which the liabilities are payable are either exempt or relieved from tax. In that event, the liabilities applicable to the exempt property e.g. heritage property are not deductible and any liabilities applicable to relieved property e.g. agricultural property are reduced pro rata in accordance with the amount of the relief.

The procedures governing the apportionment of liabilities, costs, and expenses in situations where the benefit comprises both Agricultural property (to which agricultural relief applies) and other property, are set out clearly in **Appendix 2, Page 41** and the calculation is done on the I.T.38 return form at Page 5, Appendix A, Panel 3 A (i) (agricultural) and Panel 3 B (iii) (non-agricultural).

Where Business Property (to which business relief applies) and other property are comprised in the one benefit, special apportionment rules apply. These are set out in **Appendix 3, Page 46**.

In all other cases, the apportionment rules are straightforward and require the liabilities, costs and expenses to be apportioned between the elements of property comprising the benefit.

Example

Jack takes the residue of the estate of Mary consisting of stocks and shares with a market value of €100,000 and paintings valued €50,000. Liabilities, costs and expenses proper to the benefit amount to €10,000. The paintings qualify for exemption as objects of artistic interest.

Market value of property	€150,000
Deduct property exempt from tax	€ 50,000
Market value after exemption	€100,000
Less liabilities applicable to stocks and shares	
$\frac{€100,000}{€150,000}$ x €10,000	€ 6,667
Liabilities applicable to paintings	
$\frac{€50,000}{€150,000}$ x €10,000 = €3,333.33*	

* The liabilities applicable to the paintings are not deductible as the paintings are exempt from tax.

Note only the proportion of the total liabilities, costs and expenses applicable to the stocks and shares, i.e. €6,667 should be entered at Part 7, A4 or B4 as appropriate.

Incumbrance-free value (subtract item A4 from item A3 and/or item B4 from item B3)
To arrive at the incumbrance-free value, you must subtract the figure at A4, and/or B4, i.e. liabilities, costs and expenses from the figure at A3 and/or B3, i.e. value after reliefs/exemptions and enter the result at A5 and/or B5 as appropriate.

Value of limited interest i.e. item B5 X relevant factor 0._ _ _ _
Multiply the figure at B5, i.e. the incumbrance free value by the relevant factor for the limited interest and enter the result at B6.

Where the benefit taken is a limited interest, the taxable value is less than it would be if an absolute interest is taken. CAT legislation provides for two tables at Schedule 1 of the Capital Acquisitions Tax Consolidation Act, 2003 which are used to establish the appropriate factor to be applied. Table A deals with life interests and Table B with interests taken for a period certain. To calculate this lower taxable value the incumbrance free value at B5 must;

- in the case of a life interest, be multiplied by the appropriate age factor obtained from **Table A of Appendix 7** of this guide, **(Pages 63 and 64)**.
- in the case of a period certain, be multiplied by the appropriate multiplier from **Table B of Appendix 7** of this guide **(Page 65)**.

The age factor (in the case of a life interest) or other multiplier (in the case of a period certain) will already have been identified and entered at item 7(d) of Part 3 of the return.

A detailed note on limited interests together with examples is set out in **Appendix 7, Pages 59 to 62**.

Consideration - (You may need to apportion Page 2, Part 6, Total B if reliefs or exemptions are being claimed) - Enter the consideration deductible (having apportioned if relevant) at A6 and/or B7 as appropriate.

As indicated in Part 6, consideration, if any, paid by the beneficiary for the benefit is deductible in arriving at the taxable value. The procedures for apportioning consideration in situations where the property qualifies for a relief/exemption is similar to that applying to liabilities, cost and expenses.

Taxable value -
(Column A: Subtract item A6 from item A5) -Enter the result at A7.
(Column B: Subtract item B7 from item B6) -Enter the result at B8.

Taxable value of property -
(Add item A7 to item B8) - Enter the result at 9

Taxable value of agricultural property (Page 5, Appendix A, Panel 2, item 9) - Enter the taxable value of the agricultural property which is calculated in Appendix A, Page 5, Panel 2, Item 9 at 10.

Taxable value of business property (Page 6, Appendix B, Panel 2, item 12) - Enter the taxable value of the business property which is calculated in Appendix B, Page 6, Panel 2, Item 12 at 11.

Taxable value of all property (add items 9, 10 and 11) - Total the sums at 9, 10 and 11 and enter the result at 12. We have now calculated the taxable value of all the property comprising the benefit.

Deduct small gift exemption (where relevant) - If the current benefit is a gift, insert the small gift exemption figure of €3,000 at 13 (€1,270 prior to 1 January 2003).

Under the provisions of section 69, of the Act, the first €3,000 of the taxable value of a gift is exempt from tax. The exemption does not apply to an inheritance. The exemption is limited to one gift per disponer in a calendar year. In effect, a beneficiary can take €3,000 from the same disponer in different calendar years and these gifts will be exempt from CAT. A beneficiary can take gifts from several disponers in the same calendar year and the first 3,000 of each of those gifts will be exempt.

Small Gift Exemption Amounts

	1991	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**
Amount €	**635**	**635**	**635**	**635**	**635**	**635**	**635**	**635**	**1,270**	**1,270**	**1,270**	**1,270**	**3,000**

Taxable value of benefit (subtract item 13 from item 12) - If applicable subtract 13 (small gift exemption of 3,000) from 12 (taxable value) and enter the result at 14. This figure is carried forward to Page 4, Part 8, Item 4. However, if there are other current benefits within the same group threshold they will have to be included with this benefit (see Part 8.4 of these notes).

Part 8 Self-assessment of Capital Acquisitions Tax (including interest) payable

1. Group threshold (at date of gift/inheritance)	**1**	€
2. Taxable value of aggregable prior benefits	**2**	€
3. Unused portion of threshold (subtract item 2 from item 1)	**3**	€
4. Taxable value of all current benefits within same group threshold	**4**	€
5. Taxable excess (subtract item 3 from item 4)	**5**	€
6. Tax on all current benefits (multiply item 5 by 20%)	**6**	€

7. If there is more than one current benefit at 4 above, you must calculate the proportion of tax which relates to the benefit in respect of which this return is being lodged.

Proportion = $\dfrac{\text{Taxable value of the benefit (Page 3, Part 7, item 14) } €}{\text{Taxable value all current benefits (item 4 above) } €}$ x Tax (item 6 above) € = **7** €

1. Group threshold (at date of gift/inheritance)

Enter the group threshold amount applicable to the beneficiary at 1 (see section on Group Thresholds at **Page 11**). Note that the amount entered is that which relates to the relevant threshold at the date of the benefit and not at the valuation date.

Example

Tom dies on 10 December 2001 and leaves his entire estate to his son Pat (Group A). The Grant of Probate to his estate issues on 1 May 2002 and this date is the valuation date in respect of the inheritance taken by Pat. The group threshold is that applicable at 1 December 2001, i.e. €402,253 and not that applicable at 1 May 2002 (valuation date), i.e. €422,148.

2. Taxable value of aggregable prior benefits

Enter the total taxable value of aggregable prior benefits at 2. Only prior benefits taken on or after 5 December 1991 from disponers within the same group threshold as the current benefit should be included.

Example

Current benefit taken from brother (Group B) on 1 September 2002.

Prior benefits (a) from sister (Group B) on 1 May 1997.
(b) from cousin (Group C) on 1 June 1994.
(c) from uncle (Group B) on 1 July 1991.

Only the benefit at (a) is aggregated with the current benefit.

3. Unused portion of threshold (subtract item 2 from item 1)

Subtract 2 from 1 and enter the amount at 3, i.e. unused portion of group threshold (if there are no prior benefits the unused portion will be the group threshold).

4. Taxable value of all current benefits within same group threshold

Enter taxable value current benefit at 4, i.e. the amount at Page 3, Part 7, Item 14. However, if there are other current benefits within the same group threshold (including assets which are part of this benefit but which are not being included in this return at Part 5) they must also be included. See example at 7 below.

5. Taxable excess (subtract item 3 from item 4)

Enter the amount at 5 (this is the portion of the current benefit liable to tax).

6. Tax on all current benefits (multiply item 5 by 20%)

Enter the amount at 6 (this is the tax liability on all of the current benefits within the group threshold). Gift/Inheritance tax is charged at 20%.

Example 1

John receives an inheritance of €50,000 from his uncle (Group B) on 1 September 2002.

1.	Group Threshold		€42,215.00
2.	Taxable Value Prior Benefits		Nil
3.	Unused Portion of Threshold	(subtract 2 from 1)	€42,215.00
4.	Taxable Value all Current Benefits within same Group Threshold		€50,000.00
5.	Taxable Excess	(subtract 3 from 4)	€ 7,785.00
6.	Tax on all Current Benefits	(item 5 x 20%)	€ 1,557.00

Example 2

Tom receives an inheritance of €50,000 from his uncle (Group B) on 1 October 2002. He had previously received an inheritance of €20,000 from his brother (Group B) on 1 August 1996.

1.	Group Threshold		€42,215
2.	Taxable Value Prior Benefits		€20,000
3.	Unused Portion of Threshold	(subtract 2 from 1)	€22,215
4.	Taxable Value All Current Benefits within same Group Threshold		€50,000
5.	Taxable Excess	(subtract 3 from 4)	€27,785
6.	Tax on all current benefits	(item 5 x 20%)	€ 5,557

Example 3

Mary receives an inheritance of €20,000 from her mother (Group A) on 1 November 2002. She had previously received an inheritance of €500,000 from her father (Group A) on 1 May 1997.

1.	Group Threshold		€422,148
2.	Taxable Value Prior Benefits		€500,000
3.	Unused Portion of Threshold	(subtract 2 from 1)	Nil
4.	Taxable Value All Current Benefit within same Group Threshold		€ 20,000
5.	Taxable Excess	(subtract 3 from 4)	€ 20,000
6.	Tax on all Current Benefits	(item 5 x 20%)	€ 4,000

7. If there is more than one current benefit at 4 above, you must calculate the proportion of tax which relates to the benefit in respect of which this return is being lodged

This section must be completed where, for example, the return is being filed in respect of one of a number of benefits taken on the same day from different disponers or in respect of one of several valuation dates relating to different parts of a single current benefit. What you are calculating here is the proportion of the total tax applicable to the benefit (or part of benefit) in respect of which the return is being lodged.

Example

Paul receives two inheritances on the same day i.e. €500,000 from his mother (Group A) who died on 1December 2002 and €200,000 from his father (Group A) on the death of his mother (life tenant in his father's estate). The tax is calculated on the basis of the return being lodged for his mothers estate.

1.	Group Threshold		€422,148.00
2.	Taxable Value Prior Benefits		Nil
3.	Unused Portion of Threshold	(subtract 2 from 1)	€422,148.00
4.	Taxable Value All Current Benefit within same Group Threshold		€700,000.00
5.	Taxable Excess	(subtract 3 from 4)	€277,852.00
6.	Tax on all Current Benefits	(item 5 x 20 %)	€ 55,570.40

The tax of €55,570.40 applies to both inheritances taken on 1 December 2002. We must now apportion the tax referable to the inheritance of €500,000 taken from his mother.

$$\text{Proportion} = \frac{\text{Taxable Value of Benefit}}{\text{Taxable Value All Current Benefits}} \times \text{Tax (at 6 above)}$$

$$= \frac{€500{,}000 \times €55{,}570.40}{€700{,}000} = €39{,}693.14$$

The tax applicable to the inheritance taken from his mother is €39,693.14 and this figure should be entered at 7 in the return in respect of the benefit taken from the mother.

The proportion in calculating the tax on the inheritance taken from his father on 1 December 2002 for which a separate return must be lodged is

$$\frac{€200{,}000 \times €55{,}570.40}{€700{,}000} = €15{,}877.26$$

Where a return is being lodged in respect of one of a number of Valuation Dates applicable to the same inheritance, the tax is apportioned in the same way and the tax applicable to the part of the benefit for which the return is lodged is entered at 7.

8. Credits deductible

8. Credits deductible

Double Taxation	€		
Capital Gains Tax	€		
Prior CAT on same event	€		
CAT paid in advance	€		
Total credits deductible		8	€

The amount of tax may be reduced by credits for any one or more of the following:

- Double Taxation
- Capital Gains Tax
- Prior CAT on same event
- CAT paid in advance

Total credits deductible - Where any of the above credits are claimed, the amount should be inserted in the appropriate box at 8 of Part 8. **In the event of a return being selected for audit, the basis of the claim must be substantiated.**

Each item is dealt with separately below and examples and notes on the calculation of these credits are set out in **Appendix 9, Page 71**.

Double Taxation

In the event that foreign property incurs a charge to Irish Capital Acquisitions Tax and a similar tax to CAT is payable in the foreign country on the same event, Ireland, in certain circumstances, will allow a credit for foreign tax paid.

An outline of the general principles of double taxation relief is set out in Appendix 9 together with examples of how to calculate the credits for (1) Unilateral Relief, (2) United Kingdom Inheritance Tax Relief and (3) United States of America Federal Estate Tax.

Capital Gains Tax

Where both Capital Gains Tax and Capital Acquisitions Tax are chargeable on the same asset, in connection with the same event, the Capital Gains Tax payable is allowed as a credit against the CAT. The credit, however, cannot exceed the amount of CAT attributable to the same asset.

See **No. 2, Appendix 9, Page 85**.

Prior CAT on Same Event

If CAT is charged more than once on the same property on the same event, the net tax which is earlier in priority shall be allowed as a credit against the tax which is later in priority.

The charging of tax on the same property on the same event occurs when a settlement is broken up .The break up of a settlement resulting in a potential double charge to CAT on the same property on the same event can occur in a number of different ways. Examples of this are outlined at 3, **Appendix 9, Page 85 to 88**.

CAT Paid in Advance

Where any of the tax has already been paid, e.g. as a payment on account when the Inland Revenue Affidavit was certified, the amount of this payment should be deducted as a credit.

9. Net tax payable (subtract total item 8 from item 6 or item 7, as appropriate)	9	€
10. Are you paying by statutory instalments? (✓) ☐ Yes ☐ No		
(i) Tax on property payable by instalments €		
(ii) Instalment amount now being paid €		
(iii) Tax on property not payable by instalments €		
(iv) Total tax now payable (add item 10(ii) to item 10(iii))	10	€
11. Interest on unpaid tax (interest must be included if the tax is not paid within 4 months of the valuation date)	11	€
12. Tax and interest now being paid (add items 9 and 11 or items 10 and 11, as appropriate)	12	€

9. Net tax payable (subtract total item 8 from item 6 or item 7, as appropriate)

Add the amounts (if any) in the four credits deductible boxes together and enter total credits deductible at 8. Subtract the total of any credits at 8 from 6 or 7, as appropriate, and enter the amount at 9.

10. Are you paying by statutory instalments?

Where the tax is being paid by instalments tick (✓) the "yes" box and enter the amount being paid with the return (instead of the amount at Item 9) at 10.

If, the option to pay by instalments is not being availed of, indicate by ticking (✓) the "no" box.

(i) **Tax on property payable by instalments** - Enter the amount of tax payable by instalments (see examples below).

(ii) **Instalment amount now being paid** - Enter the amount of the instalment being paid with this return.

(iii) **Tax on property not payable by instalments** - Enter the amount of tax payable on the property not eligible for payment by instalments (see example 2 below).

(iv) **Total tax now payable (add item 10(ii) to item 10(iii))** - Add 10 (ii) and (iii) and enter the result at 10 (this is the amount of tax being paid now).

When can tax be paid by instalments?

Under section 54 of the Act, CAT may be paid by five equal yearly instalments where a beneficiary takes

(1) an absolute interest in immovable property e.g. house, apartment, lands.

(2) an absolute interest in moveable property which consists of agricultural or relevant business property e.g. livestock, machinery, stock-in-trade. A beneficiary does not have to qualify for either agricultural or business relief to avail of the option to pay by instalments (section 55 of the Act refers).

(3) a limited interest in any property, whether moveable or immovable.

Where the option to pay by five yearly instalments is exercised, the first instalment is due and payable on the first anniversary of the valuation date (see **Part 3.6, Page 14** of this guide).

In the event that the property is sold or compulsorily acquired, all outstanding instalments must be paid immediately unless the beneficiary has only a limited interest in the property. However, in relation to agricultural or relevant business assets, where the proceeds of sale are re-invested in other agricultural or relevant business assets within a year of the sale the instalment arrangements can continue.

Where a beneficiary with a life interest in property (does not apply to a period certain), opts to pay the tax by instalments and dies before any instalments are due, the instalments due after the date of death of the beneficiary are waived, e.g. if the person with a life interest dies before the second instalment falls due, the 2nd, 3rd, 4th and 5th instalments are waived. In a case where a life tenant has paid the tax in one lump sum and dies before any one of the five instalments would have fallen due if he had opted for the instalment arrangment, a refund of any such instalments will be made. A claim for such refund will have to be made as Revenue may not be aware that the life tenant has died.

Interest Implications for Instalment Payments

During the five year period commencing on the valuation date, interest is payable on outstanding tax at the rate of 0.0322% per day. However, in so far as tax is referable to agricultural or relevant business property the rate of interest is 0.0241% per day. Prior to 1 September 2002 interest was calculated on a monthly basis and the 0.0322% and 0.0241% daily rates were previously 1% and 0.75% respectively per month. Where the interest period overlaps the changeover date interest at the monthly rate should be charged up to and including 31 August 2002 and at the daily rate from 1 September 2002. Note that if the instalment to which the lower rate of interest applies is not paid on its due date, the lower rate ceases, with effect from the due date and the higher rate applies to that instalment.

Paying by Instalments

Example 1

On 1 December 2002 Anne takes a gift of a dwelling-house. The gift tax amounts to €20,000. Anne opts to pay the tax by instalments. The first instalment is due 12 months after the valuation date i.e. on 1 December 2003 together with interest on all of the outstanding tax at 0.0322% per day.

Date Instalment Due	Amount of Instalment	Interest
1/12/2003	€4,000	€2,350.60 i.e. €20,000 x 0.0322% x 365
1/12/2004	€4,000	€1,880.48 i.e. €16,000 x 0.0322% x 365
1/12/2005	€4,000	€1,410.36 i.e. €12,000 x 0.0322% x 365
1/12/2006	€4,000	€ 940.24 i.e. € 8,000 x 0.0322% x 365
1/12/2007	€4,000	€ 470.12 i.e. € 4,000 x 0.0322% x 365

Example 2

A dies on 1st October 2002. The valuation date is 1 December 2002 and the assets valued at that date are - bank accounts (€30,000), house (€60,000) and business property (€90,000). In this example the option to pay by instalments is exercised by the beneficiary in respect of both the house and the business property. The example assumes that all payments, including instalments, are made when they are due.

Assume -

tax referable to the bank a/c	€ 5,000 (enter in box 10 (iii))
tax referable to the house	*€10,000 (enter in box 10 (i))
tax referable to the business property	*€15,000 (enter in box 10 (i))

* The amount entered in box 10 (i) is £25,000

If the first instalment of tax is being paid with the return, the amount to be entered in box 10 (ii) is €5,000 i.e. the sum of €2,000 (house) i.e. €10,000 / 5 and €3,000 (business property) i.e. €15,000 / 5.

Amount payable within 4 months of Valuation Date (i.e. 1 April 2003)

The entire of the tax referable to the bank account	€5,000

Amount payable on 1st Anniversary of Valuation Date (i.e. 1 December 2003)

1/5th of tax referable to the house	€2,000.00
Interest on €10,000 @ 0.0322% per day for 365 days	€1,175.30
1/5th of tax referable to the business property	€3,000.00
Interest on €15,000 @ 0.0241% per day for 365 days	€1,319.48
Total payable on 1 December 2003	€7,494.78

Amount payable on 2nd anniversary of Valuation Date (i.e. on 1 December 2004)

1/5th of tax referable to the house	€2,000.00
Interest on €8,000 (i.e. 4/5ths of the tax referable to the house) @ 0.0322% per day for 365 days	€ 940.24
1/5th of tax referable to the business property	€3,000.00
Interest on €12,000 (i.e. 4/5ths of the tax referable to the business property) @ 0.0241% per day for 365 days	€ 1,055.58
Total payable on 1 December 2004	€6,995.82

Amounts payable on subsequent anniversaries

- 1/5th of the tax, plus interest on outstanding tax- follow the procedure as in calculations of 1st and 2nd instalments above.

Remember, if an instalment relating to the tax on the business property is not paid by the due date, the lower rate of interest (0.0241% per day) applicable to the business property will, with effect from the due date, cease to apply to that instalment.

11. Interest on unpaid tax (interest must be included if the tax is not paid within 4 months of the valuation date)

Enter the amount of interest payable at 11.

Tax is due on the valuation date. If the tax is paid within four months of the valuation date no interest is chargeable. If the tax is not paid within four months of the valuation date, interest at the rate of 0.0322% per day (1% per month prior to 1 September 2002) is calculated from the valuation date to the date of payment of the tax (note that interest is chargeable for the four month period after the valuation date in respect of late payments).

Example

Valuation Date (1 September 2002),

Date of Payment (27 March 2003).

Total Number of Days = 208

Interest Chargeable = 6.6976%

12. Tax and interest now being paid (add items 9 and 11 or items 10 and 11 as appropriate)

Enter the amount of tax and interest payable at 12.

How to pay

- Send return and payment to Capital Acquisitions Tax, Capital Taxes Division, Dublin Castle, Dublin 2.
- Cheques should be crossed and made payable to the Revenue Commissioners. The name of the disponer and PPS number should be endorsed on the back of the cheque.

Alternative payment methods

1. Transfer of Government Stock.

Legislation - Section 56,Capital Acquisitions Tax Consolidation Act, 2003.

Certain Government Stock can be tendered at par value, i.e. its face value and not its market value in payment or part payment of Inheritance Tax (does not apply to Gift Tax).

If payment of inheritance tax is being made by transfer of government stock a completed Form IT40 must be enclosed with the return.

The stock must form part of the deceased's estate though it does not necessarily form part of the inheritance taken by the beneficiary using it to discharge his/her inheritance tax liability.

Example

James dies and leaves his shop to his son Joe and the residue of his estate, including eligible government stocks to his daughter Mary. Even though the eligible government stock was taken by Mary it can be used to pay the tax liability of Joe.

Conditions for acceptance are:

- The stock must be held continuously for at least three months prior to the date of death of the deceased either as part of the deceased's property, or, as part of property passing as a result of the death of the deceased, as in a trust or life tenancy.
- The stock may only be used to pay tax on property passing under the same title as itself. The effect of this is that where stock has been held solely by the deceased and therefore passes under either a will or intestacy, it may not be used to pay the tax on any property held jointly and passing by survivorship. Conversely, stock held jointly and passing by survivorship cannot be used to discharge tax on property passing under a will or intestacy.

Example

Pat dies and under the terms of his will leaves his entire estate including eligible government stock to Mary. Pat and Mary also own lands as joint tenants and Mary inherits the half share of these lands by survivorship. Mary can tender Government Stock to discharge tax applicable to the property passing under the will. However she cannot use Government stock to pay the tax applicable to the lands passing by survivorship as they pass under a different title.

- The stock must not be subject to any lien or charge.
- The stock can only be used to pay outstanding tax, i.e. if the tax has already been fully paid by cash, or a combination of cash and stock, no further payment by Government Stock may be accepted. Therefore, once tax has been paid, a further transfer of eligible stock will not be accepted for an equivalent repayment by refund.

2. Payment by donation of Heritage items

Legislation - Section 1003, Taxes Consolidation Act, 1997.

Where a taxpayer donates certain heritage items to an approved body he/she will receive a credit for the market value of the gift against arrears or future liability to Gift/Inheritance Tax as well as income tax, corporation tax and capital gains tax.

Conditions for acceptance are:

- Limited to heritage items of a value of at least €100,000. The total of all such donations in a calendar year cannot exceed 6 million.
- Heritage items mean any kind of cultural items and include any archaeological item, archive, book, manuscript, painting and any collection of cultural items. To be deemed a heritage item a specially selected committee must consider it to be:

(i) an outstanding example of the type of item involved, pre-eminent in its class, whose export from the State would constitute a diminution of the cultural heritage of Ireland (or whose import into the State would constitute a significant enhancement of the accumulated cultural heritage of Ireland) and

(ii) suitable for acquisition by an approved body.

The approved bodies which can accept a gift of heritage property are:

(i) the National Archives;
(ii) the National Gallery of Ireland;
(iii) the National Library of Ireland;
(iv) the National Museum of Ireland;
(v) the Irish Museum of Modern Art; or
(vi) any other such body which is owned or funded mainly by the State or any public or local authority which has been approved, with the consent of the Minister of Finance, by the Minister of Arts, Heritage and Gaeltacht .

When a gift of a heritage item is made to an approved body a certificate will issue certifying the receipt of the gift and the transfer of ownership to that body. A duplicate of the certificate is sent to the Revenue Commissioners. The person who makes the gift is deemed on the day the certificate is submitted to the Revenue Commissioners to have made a payment on account of tax equal to the market value of the relevant heritage item.

3. How to pay your Gift or Inheritance Tax

You can pay gift or inheritance tax for yourself or on behalf of a beneficiary using the following

methods. If you are using Revenue Online Service (ROS), you can pay by:

- Single Debit Instruction (SDI)
- Credit or Debit card.

Customers not registered for ROS can make a payment through myAccount.

If you are a non-resident, and do not have a SEPA reachable bank account, you can pay be Electronic Funds Transfer (EFT).

You should make EFT payments to:

- Account Name: Office of the Revenue Commissioners - UTD EFT - Public Bank Account
- Bank: Danske Bank, International House, 3 Harbourmaster Place, Dublin 1.
- BIC: DABAIE2D
- IBAN: IE37DABA95159920003514.

You must include your name and registration number to ensure correct and prompt allocation of funds to your customer record.

Part 9 Declaration

I/We declare that the information given is true and complete and that the return is in accordance with the provisions of the Capital Acquisitions Tax Consolidation Act, 2003.

Signed			
Capacity		Date	
	(agent/beneficiary/trustee, etc.)		

The return should be signed by the accountable person and his/her capacity stated. However the legislation allows a return to be signed by an agent. The declaration verifies that the information given is true and complete and that the assessment is correct.

Please note that returns may be subject to audit and it is important that supporting documentation (e.g. valuations, receipts etc.) be retained for six years. Penalties may be imposed for incorrect returns.

Appendix A Agricultural Relief Calculation

This page replaces the old IT41 form.

Note that a detailed explanation of Agricultural Relief, together with examples, is set out in **Appendix 2**, **Page 41** and customers are advised to read this note before attempting to complete Appendix A.

Layout of Appendix A

In Appendix A, the entitlement of the beneficiary to Agricultural Relief is established and the taxable value of the agricultural property is calculated.

The Appendix is separated into three different parts referred to as panels. These are:

- Panel 1 - Farmer Percentage Test,
- Panel 2 - Computation of Taxable Value of Agricultural Property,
- Panel 3 - Apportionment of Liabilities/Consideration.

Completing Panel 1 - Farmer Percentage Test

	*Market value at valuation date Agricultural property	*Market value at valuation date Non-Agricultural property
Beneficiary's assets (excluding property comprised in this gift/inheritance)	A €	D €
Property comprising gift/inheritance	B €	E €
Total	C €	F €

*Include an interest in expectancy and certain property subject to a discretionary trust

FORMULA $\frac{C\ €}{C\ € + F\ €} \times 100 =$ ______ %

Note: Agricultural relief will only apply if agricultural assets exceed 80%

In order to qualify as a farmer for the purposes of Agricultural Relief, a beneficiary must be domiciled in the State at the valuation date and not less than 80% of his/her assets must be represented by agricultural property.

In Part 2 at item 4 of the return we establish the domicile of the beneficiary. In Panel 1 of Appendix A we establish if not less than 80% of his/her assets are represented by agricultural property, commonly referred to as the farmer percentage test.

Beneficiary's Assets (excluding property comprised in this gift/inheritance) - Enter at A, the market value at the valuation date of the beneficiary's own agricultural property. Enter at D, the market value at the valuation date of the beneficiary's own non-agricultural property.

Property Comprising Gift/Inheritance - Enter at B, the market value at the valuation date of the agricultural property comprised in the benefit. Enter at E, the market value at the valuation date of the non-agricultural property comprised in the benefit.

Total - Enter at C, the total value of agricultural property, i.e. A + B.

Enter at F, the total value of non-agricultural property, i.e. D + E

* **Include an interest in expectancy and certain property subject to a discretionary trust** - Note that if a beneficiary has an interest in expectancy in any property or in property subject to a discretionary trust set up by himself and in which he/she is an object, i.e. potential beneficiary, the value of this property at the valuation date must be included at A, B, D or E as appropriate.

Formula for the farmer percentage test

$$\frac{C}{C + F} \times 100 = \%$$

Enter the value of C above, i.e. total value of all agricultural property owned by the beneficiary after taking the benefit. Divide it by the value of C + F, i.e. the total value of all assets owned by the beneficiary after taking the benefit and multiply the result by 100. The result of this calculation will be the percentage of the beneficiary's assets represented by agricultural property.

If the result is equal to or greater than 80% then the beneficiary qualifies for agricultural relief.

If the result is less than 80% then

- do not go any further with Appendix A - the Agricultural Relief Calculation,
- do not make an entry in Page 2, Part 5, Panel A - the Agricultural Property Panel.

Please refer to **Farmer Test** examples 1, 2, and 3 at **Appendix 2, Page 42**.

Note that unless at least 80% of his/her assets are represented by agricultural property he/she will not qualify for agricultural relief and in that event the completion of the return at Page 2, Part 5, Panel A and Page 5, Appendix A, are not relevant.

Panel 2 - Computation of Taxable Value of Agricultural Property

		COLUMN A Absolute Interest	COLUMN B Limited Interest
Market value (from Page 2, Part 5, Total A)		A1 €	B1 €
Agricultural reduction (90% of A1 and/or B1)		A2 €	B2 €
Agricultural value (subtract A2 from A1 and/or B2 from B1)		A3 €	B3 €
Relevant proportion of liabilities, costs and expenses (see Panel 3A(i) below)		A4 €	B4 €
Incumbrance-free value (subtract A4 from A3 and/or B4 from B3)		A5 €	B5 €
Value of limited interest i.e. B5 x relevant factor	0 . _ _ _ _		B6 €
Appropriate deduction for consideration (see Panel 3A (ii) below)		A6 €	B7 €
Taxable value	(A) Subtract A6 from A5 (enter at A7) (B) Subtract B7 from B6 (enter at B8)	A7 €	B8 €
Taxable value (A7 + B8)		9 € (Enter this figure in Page 3, Part 7, item 10)	

Completing Panel 2 of Appendix A

Market value (from Page 2, Part 5, Total A) - Enter at A1 or B1 as appropriate, the market value at the valuation date, of the agricultural property in the benefit. This figure is the total value of agricultural property at Page 2, Part 5, Panel A.

Agricultural reduction (90% of A1 and/or B1)- Enter at A2 or B2, as appropriate, 90% of the value at A1 or B1.

Agricultural value (subtract A2 from A1 and/or B2 from B1) - Enter the result at A3 or B3, as appropriate. This figure represents the Agricultural Value of the Agricultural Property.

Relevant proportion of liabilities, costs and expenses (see Panel 3 A (i) below) - Enter at A4 or B4, as appropriate, the amount of liabilities, costs and expenses deductible. This figure is calculated at Panel 3 A(i).

Incumbrance-free value (subtract A4 from A3 and/or B4 from B3) - Enter the result at A5 and/or B5, as appropriate.

Value of limited interest i.e. B5 x relevant factor 0._ _ _ _ - Enter in the space provided in Panel 2 the relevant factor for a limited interest. This factor will have been identified and inserted at Page 1, Part 3, Item 7 (d). This only applies if the benefit taken is a limited interest i.e. for life or for a period certain. Multiply the figure at B5 by the appropriate factor and enter the result at B6.

Appropriate deduction for consideration (see Panel 3 A (ii) below) - Enter at A6 or B7, as appropriate, the amount of consideration deductible. This figure is calculated at Panel 3 A (ii).

Taxable value
(A) Subtract A6 from A5 (enter at A7)
(B) Subtract B7 from B6 (enter at B8) - Enter the result at A7 and/or B8 as appropriate.

Taxable value (A7 + B8) - Enter the sum of the figures in A7 and B8 at 9 and enter this figure in Page 3, Part 7, Item 10. This figure represents the taxable value of the Agricultural Property in the benefit.

Panel 3 Apportionment Of Liabilities/Consideration

At Panel 3 A, we calculate the amount of the liabilities and consideration deductible from the agricultural property when agricultural relief applies. At Panel 3 B, we calculate the amount of the liabilities and consideration deductible from the non-agricultural property when agricultural relief applies.

Completing Panel 3A

Formula: Agricultural Property

A $\frac{\text{a. *Market value agricultural property}}{\text{b. *Market value of benefit}}$ x **c.** Total liabilities etc. and/or **d.** Total consideration

(i)	a. € / b €	x	c. Liabilities etc. €	x 10% =	Allowable proportion of liabilities, costs, etc. €	Bring this figure to item A4 or B4, Panel 2 above, as appropriate
(ii)	a. € / b €	x	d. Consideration €	x 10% =	Allowable proportion of consideration €	Bring this figure to item A6 or B7, Panel 2 above, as appropriate

Formula: Agricultural Property

a. Market value agricultural property x c. Total liabilities etc. and/or d. Total consideration
b. Market value of benefit

Apportionment of Liabilities

Enter at (i) a. the market value of agricultural property (see Page 2, Part 5, Panel A).
Enter at (i) b. the market value of the benefit i.e. the sum of Panels A, B and C at Page 2, Part 5.
Enter at (i) c. the total liabilities etc. i.e. the liabilities at Page 2, Part 6, Panel A.

Divide the figure at **a.** by the figure at **b.** and multiply the result by the figure at **c.** to arrive at the amount of the liabilities applicable to the agricultural property. To ascertain the amount of the liabilities applicable to the agricultural property that are deductible multiply the above result by 10% and enter the result in the box headed "allowable proportion of liabilities, costs, etc." This figure is then entered at A4 or B4, as appropriate, in Panel 2.

Apportionment of Consideration

Repeat the above procedure at A (ii) and enter the result at A6 or B7, as appropriate, in Panel 2. The consideration to be entered at **d.** is the total consideration at Page 2, Part 6, Panel B.

Completing Panel 3 B

Formula: All other property

B **e.** *Market value of all other property
x **g.** Total liabilities etc. and/or **h.** Total consideration
f. *Market value of benefit

(iii) **e.** € / **f.** € x **g.** Liabilities etc. € = Allowable proportion of liabilities, costs, etc. € ← Bring this figure to Page 3, Part 7, item A4 or B4, as appropriate

(iv) **e.** € / **f.** € x **h.** Consideration € = Allowable proportion of consideration € ← Bring this figure to Page 3, Part 7, item A6 or B7, as appropriate

* See Guide to completing the Gift/Inheritance Tax Self-Assessment Return regarding treatment of secured liabilities and liabilities referable to particular assets only

Formula: All other property

e. Market value of all other property x g. Total liabilities etc. and/or h. Total consideration
f. Market value of benefit

Apportionment of Liabilities

Enter at (iii) e. the market value of all other property (see Page 2, Part 5, Panel C).
Enter at (iii) f. the market value of the benefit i.e. the sum of Panels A, B and C at Page 2, Part 5.
Enter at (iii) g. the total liabilities i.e. the liabilities at Page 2, Part 6, Panel A.

Divide the figure at **e.** by the figure at **f.** and multiply the result by the figure at **g.** and we arrive at the amount of the liabilities applicable to all other property i.e. the non-agricultural property. Enter the result in the box headed "Allowable proportion of liabilities, costs, etc.". This figure is then carried to Page 3, Part 7, Column A, item A4 or Column B, item B4, as appropriate.

Apportionment of Consideration

Repeat the above procedure at B (iv) and enter the result at Page 3, Part 7, Column A item A6 or Column B, item B7 as appropriate. The consideration to be entered at **h.** is the total consideration at Page 2, Part 6, Panel B.

Appendix B Business Relief Calculation

This page replaces the old IT5 form.

Note that a detailed note on Business Relief, together with examples, is set out in **Appendix 3, Page 46** and customers are advised to read this note before attempting to complete Appendix B.

Layout of Appendix B

The Appendix is separated into two different parts referred to as panels. These are:

- Panel 1 - Details of the Business
- Panel 2 - Computation of Taxable Value of Business Property

Completing Panel 1 - Details of the Business

(i) Name and location of business [ ]

Description of the business [ ]

(ii) Is the relevant business property: *Tick (✓) appropriate box and insert in column A or B, below, as appropriate, the values attributable to that property prior to the relief.*

- ☐ a business or an interest in a business, i.e. of a sole trader or of a partnership?
- ☐ unquoted shares or securities of a company carrying on a business?
- ☐ land, buildings, plant and machinery owned by the disponer but used wholly or mainly for the purposes of a business carried on by a company controlled by the disponer or by a partnership of which the disponer was a partner?
- ☐ quoted shares or securities (previously unquoted) of a company carrying on a business?

(iii) Where the relevant business property consists of unquoted/quoted shares or securities please indicate whether the beneficiary on the valuation date and after taking the gift or inheritance: *Tick (✓) appropriate box.*

- ☐ controlled more than 25% of the voting rights relating to all questions affecting the company as a whole; or
- ☐ controlled the company within the meaning of section 27 of the Capital Acquisitions Tax Consolidation Act, 2003; or
- ☐ owned 10% or more of the aggregate nominal value of all the issued shares and securities of the company and had worked full-time in a management or technical capacity in the company (or in the case of a group, for any company or companies in the group) throughout the period of 5 years ending on the date of the gift or inheritance.

(i) Name and location of business - Enter in the space provided the name and location of the business.

Description of the business - Enter a brief description of the business in the space provided, e.g. pub, garage, shop.

(ii) Is the relevant business property - Indicate, by ticking (✓) the appropriate box, whether the property is

- ☐ **a business or an interest in a business i.e. of a sole trader or of a partnership?**

Or

- ☐ **unquoted shares or securities of a company carrying on a business?**

Or

- ☐ **land, buildings, plant and machinery owned by the disponer but used wholly or mainly for the purposes of a business carried on by a company controlled by the disponer or by a partnership of which the disponer was a partner?**

Or

- ☐ **quoted shares or securities (previously unquoted) of a company carrying on a business?**

(iii) Where the relevant business property consists of unquoted/quoted shares or securities please indicate whether the beneficiary on the valuation date and after taking the gift or inheritance - Indicate by ticking (✓) the appropriate box whether the beneficiary

- ☐ **controlled more than 25% of the voting rights relating to all questions affecting the company as a whole;**

Or

- ☐ **controlled the company within the meaning of section 27 of the Capital Acquisitions Tax Consolidation Act, 2003;**

Or

- ☐ **owned 10% or more of the aggregate nominal value of all the issued shares and securities of the company and had worked full-time in a management or technical capacity in the company (or in the case of a group, for any company or companies in the group) throughout the period of 5 years ending on the date of the gift or inheritance.**

Panel 2 Computation of Taxable Value of Business Property

	COLUMN A Absolute Interest	COLUMN B Limited Interest	
Market value of relevant business property (Page 2, Part 5, Panel B)	A1 €	B1 €	
Liabilities and consideration	A2 €	B2 €	Value of limited interest in excepted assets i.e. B4 x relevant factor 0.
Taxable value (subtract A2 from A1 and/or B2 from B1)	A3 €	B3 €	
Value attributable to excepted assets	A4 €	B4 €	B4(i) €
Value of the relevant business property attributable to non-excepted assets and excluding property qualifying for agricultural relief (subtract A4 from A3 and/or B4 from B3)	A5 €	B5 €	Value of limited interest in assets not eligible for relief i.e. B6 x relevant factor 0.
If any part of the value at A5 and/or B5 is not eligible for relief under the replacement property or successive benefits rules enter the value not eligible	A6 €	B6 €	B6(i) €
Value of the relevant business property on which relief will be granted (subtract A6 from A5 and/or B6 from B5)	A7 €	B7 €	
Value of limited interest i.e. B7 x relevant factor	0.	B8 €	
Amount of relief (90% of A7 and/or B8, as appropriate)	A8 €	B9 €	
Taxable value attributable to qualifying relevant business property after relief (subtract A8 from A7, and/or B9 from B8, as appropriate)	A9 €	B10 €	
Taxable value attributable to all relevant business property (including excepted assets and assets not eligible for relief) Column A: A4 + A6 + A9 Column B: B4(i) + B6(i) + B10	A10 €	B11 €	
Taxable value (A10 + B11)	12 € (Enter this figure in Page 3, Part 7, item 11)		

Completing Panel 2

Market value of relevant business property (Page 2, Part 5, Panel B) - Enter in A1 or B1, as appropriate, the market value at the valuation date, of the relevant business property in the benefit. This figure is the total value of Business Property at Page 2, Part 5, Panel B.

Liabilities and consideration - Enter at A2 or B2, as appropriate, the amount of liabilities and consideration at Page 2, Part 6, Panels A and B that are deductible from the Relevant Business Property. (See example at **Appendix 3, Page 51** on calculation of Business Relief and treatment of liabilities/consideration).

Taxable value (subtract A2 from A1and/or B2 from B1) - Enter the result in A3 and/or B3 as appropriate.

Value attributable to excepted assets - Enter at A4 or B4, as appropriate, the value of excepted assets (**see Appendix 3**). If the interest in the excepted assets passing is a limited interest, multiply the figure in B4 by the relevant factor (already identified and entered at Page 1, Part 3, Item 7(d)) and enter the result at B4(i).

Value of limited interest in excepted assets i.e. B4 x relevant factor 0. _ _ _ _ - Enter in the space provided, the relevant factor for a limited interest. This factor would have been identified and inserted at Page 1, Part 3, Item 7(d). This only applies if the benefit taken is a limited interest, i.e. for life or a period certain. Enter at B4(i) the result when you multiply the figure in B4 by the relevant factor.

Value of the relevant business property attributable to non-excepted assets and excluding property qualifying for agricultural relief (subtract A4 from A3 and/or B4 from B3) - Enter the result in A5 or B5, as appropriate.

If any part of the value at A5 and/or B5 is not eligible for relief under the replacement property or successive benefits rules enter the value not eligible - Enter the value of any property not so eligible at A6 and/or B6 as appropriate (see notes on replacement property and successive benefits in **Appendix 3, Pages 48 and 49**). If the interest taken is a limited interest, multiply the figure in B6 by the relevant factor (already identified and entered at Page 1, Part 3, Item 7(d)) and enter the result at B6(i).

Value of limited interest in assets not eligible for relief, i.e. B6 x relevant factor 0. _ _ _ _ - Enter in the space provided the relevant factor for a limited interest. This factor would have been identified at Page 1, Part 3, Item 7(d). This only applies if the benefit taken is a limited interest, i.e. for life or for a period certain. Enter at B6(i) the result when you multiply the figure at B6 by the relevant factor.

Value of the relevant business property on which relief will be granted (subtract A6 from A5 and/or B6 from B5) - Enter the result in A7 and/or B7, as appropriate.

Value of limited interest i.e. B7 x relevant factor 0. _ _ _ _ - Enter in the space provided, the relevant factor for a limited interest. This factor will have been identified and inserted at Page 1, Part 3, Item 7(d). This only applies if the benefit taken is a limited interest i.e. for life or for a period certain. Enter at B8 the result when you multiply the figure in B7 by the appropriate factor.

Amount of relief (90% of A7 and/or B8, as appropriate) - Enter at A8 and/or B9, as appropriate, 90% of the value in A7 or B8.

Taxable value attributable to qualifying relevant business property after relief (subtract A8 from A7 and/or B9 from B8, as appropriate) - Enter the result in A9 and/or B10, as appropriate.

Taxable value attributable to all relevant business property (including excepted assets and assets not eligible for relief) - Column A: A4 + A6 + A9 Column B: B4(i) + B6(i) + B10 - Add the figures in A4, A6 and A9 and enter the result in A10. Add the figures in B4(i), B6(i) and B10 and enter the result in B11.

Taxable value (A10 + B11) - Add the amounts in A10 + B11 and enter the result at 12 and then enter this amount in Page 3, Part 7, Item 11. This figure represents the taxable value of the Business Property in the benefit.

Appendix 1 Favourite Nephew/Niece Relief - Notes and Examples

Legislation - Paragraph 7, Part 1, Schedule 2, Capital Acquisitions Tax Consolidation Act, 2003.

Relief

Under Paragraph 7, a niece or nephew is deemed to be a child of the disponer i.e. they are entitled to the Group A threshold instead of the Group B threshold.

This relief applies to a niece or nephew, who has worked substantially on a full-time basis for the disponer for the period of five years ending on the date the disponer ceases to have a beneficial interest in possession in the business. The relief will only apply to assets used in connection with the business.

Note that farming is a business.

The niece/nephew must be a blood relation. The relief does not apply to a niece/nephew-in-law.

In order to qualify for the relief, the beneficiary must have worked a minimum number of hours in the disponer's business

- 15 hours per week in a small business, i.e. a business carried on exclusively by the disponer, the disponer's spouse and the nephew/niece.
- 24 hours per week in a larger business, i.e. where there are other employees.

Intervening life interest

Where there is an intervening life interest before the niece/nephew succeeds to the property, the beneficiary must have worked in the disponer's business for the five years ending on the date the disponer's interest in the business ceased.

Example

John (disponer) dies in 1996 and by his will leaves his business to his wife Mary for her life and on her death to his niece Anne. Anne has worked substantially on a full time basis in the business since leaving school in 1990 and continues to work in the business after the death of John.

On the death of Mary (life tenant) in 2002, Anne inherits the business. Anne will qualify for favourite niece relief, i.e. Group A threshold because she worked in the disponer's (John) business for the five years prior to the cessor of John's interest in the business in 1996.

If in this example, Anne had only worked in the business since 1992, she will not qualify for the relief even though she has worked in the business for 10 years as she would only have been assisting the disponer John for four years.

Similarly, if Anne had worked in the business for John between 1990 and 1996 and left the business after John's death in 1996, she would still qualify for favourite niece relief when she inherited the property on the death of Mary in 2002.

Companies and Favourite Nephew/Niece Relief

In order for shares in a private company to qualify for the relief, the company must be a private trading company controlled by the disponer in accordance with the provisions of section 27 of the Act and the disponer must also be a director of the company.

Note that investment assets included in a balance sheet are not regarded as business assets for the purpose of Favourite Nephew/Niece relief and a beneficiary will only be entitled to the Group B threshold on such assets.

Discretionary Trusts and Favourite Nephew/Niece Relief

Favourite Nephew/Niece relief will **not** apply if the benefit is taken under a discretionary trust.

Aggregation and Favourite Nephew/Niece Relief

The relief, i.e. Group A threshold (same threshold as a child) will only apply to business assets. If there is an inheritance/gift of both business and non-business assets, the Group A threshold will apply to business assets and the Group B threshold will apply to the non-business assets. As only benefits within the same Group threshold aggregate, beneficiary will have two separate thresholds if the benefit consists of both business and non-business assets.

Unsecured Liabilities and Favourite Nephew/Niece Relief

In the event that the benefit consists of both business and non-business assets and there are unsecured liabilities, these must be apportioned pro rata between the business assets and non-business assets.

Example

James Murphy inherits the estate of his uncle in 2002. The inheritance consists of

Agricultural Assets	€500,000 (business)
Non-agricultural Assets	€100,000 (non-business)
Debts and administration expenses	€20,000

James qualifies for favourite nephew relief in respect of the business (agricultural assets). Assume for the purpose of this example that he does not qualify for agricultural or business relief.

The liabilities of €20,000 have to be apportioned between the business and non-business assets.

(a) Business Assets = $\frac{\text{Gross Value Business Assets}}{\text{Gross Value All Assets}}$ X Liabilities = $\frac{€500,000}{€600,000}$ X €20,000 =€16,667

(b) Non-business Assets = $\frac{\text{Gross Value Non-Business Assets}}{\text{Gross Value All Assets}}$ X Liabilities = $\frac{€100,000}{€600,000}$ X €20,000 =€3,333

Taxable Value Business Assets = €500,000 less €16,667 = €483,333 (Group A)
Taxable Value Non-business Assets = €100,000 less €3,333 = € 96,667 (Group B)

The inheritances of (a) Business Assets (Group A) and (b) Non-business Assets (Group B) do not aggregate even though they are part of the one inheritance (they are not within the same group threshold).

Assessment

(a) Business Assets	Taxable Value	€483,333.00
	Less Group A Threshold	€422,148.00
	Taxable Excess	€ 61,185.00
	Tax @ 20%	€ 12,237.00
(b) Non-business Assets	Taxable Value	€ 96,667.00
	Less Group B Threshold	€ 42,215.00
	Taxable Excess	€ 54,452.00
	Tax @ 20%	€ 10,890.40
Total Tax payable by James = (a) + (b) =		€ 23,127.40

Note: In the event of the benefit consisting of business and non-business assets separate returns should be furnished for each portion of the benefit.

Appendix 2 Agricultural Relief - Notes and Examples

Legislation - Section 89, Capital Acquisitions Tax Consolidation Act, 2003.

Agricultural relief is available for both gifts and inheritances.

The relief operates by reducing the market value of "agricultural property" so that gift or inheritance tax is calculated on an amount - known as the **"agricultural value"** - which is substantially less than the open market value of the property.

What is "agricultural property"?

"Agricultural Property" means

- agricultural land, pasture and woodland in the State;
- crops, trees and underwood growing thereon;
- houses and other farm buildings appropriate to the property;
- livestock, bloodstock and farm machinery thereon.

To qualify for relief the gift/inheritance must consist of agricultural property both at the date of the gift/inheritance and at the valuation date.

Exceptionally, however, the relief may apply to the whole or part of a gift or inheritance notwithstanding that the whole or part did not strictly consist of agricultural property until after the date of gift or inheritance:

- where an individual receives a benefit on condition that it is invested in whole or in part in agricultural property and the condition is fully complied with inside two years of the date of gift or inheritance;
- where in the course of administration, agricultural property is appropriated to satisfy in whole or in part a benefit under a will or intestacy and that agricultural property was subject to the will or intestacy at the date of inheritance.

Example

Tom dies in December, 2002 and leaves a legacy of €50,000 to his son Pat and the residue of his estate including lands valued at €200,000 to his daughter Clare. Under the provisions of Section 55, Succession Act, 1965 the executor transfers land valued at €50,000 to Pat in satisfaction of his legacy. Provided Pat qualifies as a farmer he will be entitled to agricultural relief. In order to qualify for the relief, the lands appropriated to Pat must have been part of Tom's estate. The executor could not purchase lands with the €50,000.

What is a "Farmer"?

Farmer in this context does not refer to the occupation of the beneficiary. Rather, to qualify as a "farmer" a number of conditions must be met by the beneficiary at the **valuation date:**

- be an individual (companies do not qualify);
- domiciled in the State;
- at least 80% of the gross market value of whose assets is represented, on the **valuation date,** by agricultural property - after taking the gift or inheritance into account.

Note that no test, i.e. farmer percentage test or domicile test, is necessary in respect of a gift or inheritance of trees or underwood.

A beneficiary who qualifies for agricultural relief must be resident in the State for all of the three tax years immediately following the tax year in which the valuation date falls or the relief granted will be withdrawn.

Points to note re the "farmer percentage test"

- market values of property are used even where the beneficiary has only a limited interest (see example 2)
- no deduction is made for liabilities e.g. a mortgage (see example 2).
- an interest in expectancy of property or property subject to a discretionary trust set up by a beneficiary who is an object of that trust, i.e. potential beneficiary are taken into account as assets of the beneficiary for the purpose of the 80% test. It is the value of the expectant interest in the property that is included for the purpose of the test and not the market value, i.e. market value less the value of the limited interest (see example 3).
- assets of the beneficiary which were previously received as a gift/inheritance and which were exempt from Capital Acquisitions Tax must be included.
- the domicile criterion and the "80%" test do not apply in the case of agricultural property which consists of trees or underwood.

Example 1

Michael receives a gift of lands (value €500,000) and livestock (value €100,000). He is domiciled in the State at the valuation date. His only other assets are a car (value €20,000) and bank a/c (value €30,000).

Farmer Percentage Test

Agricultural Assets		**Non-agricultural Assets**	
Lands	€500,000	Car	€20,000
Livestock	€100,000	Bank a/c	€30,000
Total	€600,000	Total	€50,000

$$\frac{\text{Total Agricultural Assets}}{\text{Total All Assets}} \times 100 = \frac{€600{,}000}{€650{,}000} \times 100 = 92.3\%$$

After taking the gift, **92.3%** of Michael's assets are agricultural and he qualifies for agricultural relief on the agricultural assets comprised in the gift i.e. lands and livestock.

Example 2

Mary (age 50) receives an inheritance of the following assets for her life; lands (value €600,000 with a mortgage of €50,000), livestock (value €80,000) and a bank a/c (value €20,000) at the valuation date.

Mary has a house of her own (value €140,000 with a mortgage of €60,000). She is domiciled in the State.

Farmer Percentage Test

Agricultural Assets		**Non-agricultural Assets**	
Lands	€600,000*	Bank a/c	€ 20,000
Livestock	€ 80,000	House	€ 140,000*
Total	€680,000	Total	€ 160,000

* Ignore fact that there is a mortgage on the lands and house. Ignore also that Mary has been given only a life interest in the assets she inherited.

$$\frac{\text{Total Agricultural Assets}}{\text{Total All Assets}} \times 100 = \frac{€680{,}000}{€840{,}000} \times 100 = 80.95\%$$

After taking the gift, **80.95%** of Mary's assets are agricultural and she qualifies for agricultural relief on the agricultural assets in the inheritance i.e. lands and livestock.

Example 3

Paul dies and leaves his lands (value €200,000) at the valuation date, to his son James. He leaves the residue of his estate comprising a bank a/c of €100,000 to his wife Joan (aged 90 years) for her life and on her death to his son James.

James has no assets of his own.

Farmer Percentage Test

Agricultural Assets		**Non-agricultural Assets**	
Lands	€200,000	Bank a/c	*€84,910

* Even though James will only become "entitled in possession" to the bank a/c when his mother dies, he is deemed to be beneficially entitled to it, on the valuation date, for the purposes of the farmer test.

Value of Joan's life interest is €100,000 X 0.1509 = €15,090.

Value of James's expectant interest is €100,000 less €15,090 = *€84,910.

$$\frac{\text{Total Agricultural Assets}}{\text{Total All Assets}} \times 100 = \frac{€200{,}000}{€284{,}910} \times 100 = 70.19\%$$

As only **70.19%** of James's assets are agricultural, he does not qualify for agricultural relief in respect of the inheritance of the lands.

What is the extent of the relief?

For gifts and inheritances of agricultural property the relief is calculated by reducing the market value of the property by 90%.

Example

On 6 October, 2002, Pat transfers agricultural property with a market value of €1,000,000 to his daughter Mary. Mary qualifies as a "farmer".

The agricultural value of the property is calculated as follows:

Market value of agricultural property	€ 1,000,000
Relief	
90% reduction of market value	€ 900,000
"Agricultural Value" i.e. taxable value of property	€ 100,000

Note that a gift or inheritance of livestock or machinery will only qualify for agricultural relief if the gift/inheritance also includes land.

Agricultural Property and Business Relief

Agricultural property can qualify for Business Relief. This is dealt with in more detail at **Appendix 3, Page 52** - Business Relief.

In Example 3 above, the beneficiary James who failed to qualify for agricultural relief might qualify for business relief if the necessary business relief conditions were fulfilled - see **Appendix 3**. In most cases it would be more beneficial for a beneficiary to qualify for agricultural relief rather than business relief. Note that a beneficiary does not have the option of choosing whether he should claim agricultural relief or business relief. It is only in the event that he fails to qualify for agricultural relief that he can opt for business relief.

How Does the Relief Affect Deductions?

Given that the full market value of the agricultural property is reduced by 90% in order to arrive at the agricultural value, any liabilities costs and expenses properly payable out of the property and any consideration paid for the property must be similarly scaled down before being deducted from the agricultural (taxable) value.

Example

On 1 October, 2002, Declan transfers lands (market value €300,000) to Jane in consideration of Jane paying the costs of €10,000 and consideration of €50,000 to Declan.

Jane qualifies as a farmer.

Market Value of Lands	€ 300,000
Relief 90%	€ 270,000
Agricultural Value (10%)	€ 30,000

As only 10% of the value of the lands i.e. €30,000 will be taxed, only 10% of the costs i.e. €1,000 and 10% of the consideration i.e. €5,000 will be allowed as a deduction.

Agricultural Value (10%)		€ 30,000
Less: allowable proportion of		
- costs	€1,000	
- consideration	€5,000	€ 6,000
Taxable Value		€ 24,000

Apportionment of Liabilities.

In the event that a benefit consists of both agricultural and non-agricultural assets, unsecured liabilities, e.g. administration costs, funeral expenses etc., will have to be apportioned pro rata between the agricultural assets and the non-agricultural assets. However, it is only that part of the liabilities applicable to the agricultural property that will have to be reduced.

Example

Brendan dies and leaves his whole estate to Colm. The estate consists of the following assets at the valuation date:

Lands & House	€ 800,000
Livestock & Machinery	€ 200,000
Furniture	€ 20,000
Bank a/c	€ 60,000
Total	€ 1,080,000

Unsecured liabilities, debts and expenses amount to €50,000

Colm qualifies for agricultural relief

	Agricultural Property	Non-agricultural Property
Market Value	€ 1,000,000.00	€ 80,000.00
Agricultural Relief (90%)	€ 900,000.00	
Agricultural Value (10%)	€ 100,000.00	
Less apportioned liabilities* (see below)	€ 4,629.63	€ 3,703.70
Taxable Value	€ 95,370.37	€ 76,296.30

Total Taxable Value of Inheritance (Agricultural Property + Non-agricultural Property) €171,666.67

*The unsecured liabilities of €50,000 will have to be apportioned pro rata between the agricultural property and the non-agricultural property. This may be done by using the following simple mathematical formula:

$\frac{\mathbf{X}}{\mathbf{Y}} \times \mathbf{D}$ where **X** = either the market value of the agricultural or non-agricultural property
Y = value of all of the property
D = unsecured liabilities

Apportionment

Agricultural Property

$\frac{\textbf{X} \text{ (agricultural property)}}{\textbf{Y} \text{ (all property)}} \times \textbf{D} \text{ (liabilities)} = \frac{€1,000,000}{€1,080,000} \times €50,000 = €46,296.30$

As only 10% of the agricultural property (m.v. €1,000,000) i.e. €100,000 is being taxed, only 10% of the liabilities referable to the agricultural property (€46,296.30) i.e. €4,629.63 is deductible.

Non-agricultural Property

$\frac{\textbf{X} \text{ (non-agricultural property}}{\textbf{Y} \text{ (all property)}} \times \textbf{D} \text{ (liabilities)} = \frac{€\ 80,000}{€1,080,000} \times €50,000 = €3,703.70$

As there is no relief applicable to the non-agricultural property, the liabilities applicable to it i.e. €3,703.70 can be deducted in full.

Total liabilities deductible €8,333.33

Any consideration payable would be similarly apportioned.

Treatment of Secured Liabilities

Where any property is specifically charged with a liability e.g. a mortgage or reserved rights, that liability is not apportioned pro rata between agricultural and non-agricultural property. However, if there are secured and unsecured liabilities the secured liability must first be deducted from the asset on which it is charged and the unsecured liabilities are then apportioned pro rata between the agricultural property (net of the charge e.g. mortgage) and the non-agricultural property.

Note also that if a liability, e.g. stamp duty on a transfer of property (other than a secured liability) is referable to a particular asset it is not apportioned between agricultural and non-agricultural property.

Example

Sarah gifts the following assets to Seamus:

Lands & House	€400,000 (with a mortgage of €50,000)
Livestock & Machinery	€100,000
Motor Car	€ 40,000
Total	€540,000

The stamp duty on the transfer of the lands is €10,000 and the legal costs amount to €5,000.

Seamus qualifies for agricultural relief.

The stamp duty is referable to the lands only.

The solicitor's costs will have to be apportioned pro rata between the agricultural property and the non-agricultural property.

		Agricultural Property	Non-agricultural Property
Market Value		€ 500,000.00	€40,000.00
Agricultural Relief (90%)		€ 450,000.00	
Agricultural Value (10%)		€ 50,000.00	
Less:			
Mortgage (10%)	€5,000.00*		
Stamp Duty (10%)	€1,000.00*		
Apportioned unsecured liabilities (see below)	€ 459.18	€ 6,459.18	€ 408.16
Taxable Value		€ 43,540.82	€39,591.84

Total Taxable Value of Inheritance (Agricultural Property + Non-agricultural Property) €83,132.66

* As only 10% of the lands is being taxed, only 10% of the mortgage i.e. €5,000 and 10% of the stamp duty i.e. €1,000 is deductible.

Apportionment of Unsecured Liabilities

The unsecured liabilities of €5,000, i.e. legal costs, will have to be apportioned pro rata between the agricultural property (net of mortgage) and the non-agricultural property.

Formula $\frac{X}{Y} \times D$ where X = either the market value of agricultural property (less mortgage) or non-agricultural property.
Y = market value of all the property (less mortgage).
D = unsecured liabilities.

Agricultural Property

$\frac{\textbf{X} \text{ (agricultural property less mortgage)}}{\textbf{Y} \text{ (all property less mortgage)}} \times \textbf{D} \text{ (liabilities)} = \frac{€450,000}{€490,000} \times €5,000 = €4,591.84$

As only 10% of the agricultural property is being taxed i.e. €50,000 only 10% of the unsecured liabilities referable to the agricultural property i.e. €459.18 is deductible.

Non-agricultural Property

$\frac{\textbf{X} \text{ (non-agricultural property)}}{\textbf{Y} \text{ (all property less mortgage)}} \times \textbf{D} \text{ (liabilities)} = \frac{€40,000}{€490,000} \times €5,000 = €408.16$

As there is no relief applicable to the non-agricultural property, the liabilities applicable to it i.e. €408.16 can be deducted in full.

Can the Relief be Withdrawn or Clawed Back ?

Yes. There are a number of circumstances in which the relief can be withdrawn or partially clawed back.

1. If the property is sold:

   In general, the relief is withdrawn where the agricultural property is sold or compulsorily acquired within six years of the date of the gift or inheritance and is not replaced by other agricultural property within **one year**, in the case of a voluntary sale or within **six** years where the property is compulsorily acquired i.e. the subject of a compulsory purchase order. If only part of the property is sold, the agricultural relief on that part only is withdrawn.

   The withdrawal, or partial clawback, of the relief does not apply in relation to the sale of crops or timber, or where the beneficiary dies before the sale or compulsory acquisition.

   However, there is no clawback where the beneficiary dies before the property is sold or compulsorily acquired.

2. If a residency requirement is not met:

   In the case of a gift or inheritance the relief is withdrawn unless the beneficiary is resident in the State for all of the three tax years, immediately following the tax year in which the **Valuation Date** falls.

   In the event of a clawback of relief a revised return (Form IT38) must be delivered. Interest will arise on the additional tax if it is not paid within four months of the event giving rise to the clawback, e.g. date of sale.

Appendix 3 Business Relief - Notes and Examples

Legislation - Sections 90 to 102, Capital Acquisitions Tax Consolidation Act, 2003.

What is the relief?

The relief will amount to a reduction of 90% in respect of the taxable value of relevant business property taken by the beneficiary. Note that it is the **taxable value** of relevant business property that obtains the relief and not the market value.

Example

Michael inherits the family business on 1 September, 2002. The taxable value of the business is €4,000,000. Business relief is calculated as follows:

Taxable value prior to relief	€ 4,000,000
Reduction of 90%	€ 3,600,000
Revised taxable value after relief	€ 400,000

What is relevant business property?

Only relevant business property will qualify for the relief. “Relevant Business Property” is defined as:

- The business or an interest in the business in the case of a business carried on by a sole trader or by a partnership. “Business” is defined as one which is carried on for gain and it includes the exercise of a profession or vocation as well as a trade.

Individual assets used in the business, such as a factory will not qualify for the relief if transferred to the beneficiary without the business.

Example

Anne started a craft business in her own premises twenty years ago. The crafts are purchased by local shops. She works in the business with her brother Vincent who is an employee. She wishes to give a gift of the premises to Vincent but the business will continue to be hers. The premises will not qualify as relevant business property.

- the unquoted shares or securities of a company carrying on a business provided that -
  - the company is incorporated and
  - the beneficiary will, on the valuation date and after taking the gift or inheritance, either;

(1) own more than 25% of the voting rights relating to all questions affecting the company as a whole.

Example

ABC Ltd. is a private incorporated company. The shares are held as follows:

Mary Burke	33.34%
John Walshe	33.33%
Michael Reid	33.33%

Mary now wishes to gift her holding of shares to her son Maurice. Following the gift, Maurice will have a 33.34% holding. The shares will qualify as relevant business property.

OR

(2) control the company within the meaning of Section 27, of the Capital Acquisitions Tax Consolidation Act, 2003.

Example

DEF Ltd., a private incorporated company owned by Stephanie and her relatives (as shown below). It has an issued share capital of 10 €1 Class A shares and 90 €1 Class B shares. Only the Class A shares hold voting rights. The shares are held as follows:

	Class A	Class B	Aggregate (A+B)
Fergus Dwyer	6	-	6
Patricia Dwyer	4	-	4
Barry Dwyer	-	60	60
Lucy Dwyer	-	25	25
Stephanie Dwyer	-	5	5
Total	10	90	100

Barry wishes to gift a quarter of his shares to his niece, Stephanie. Following the gift Stephanie will have control of the company within the meaning of section 27 of the Act (i.e. under the control of Stephanie and her relatives) and the gift of shares will therefore qualify for business relief.

OR

(3) Own at least 10% or more of the aggregate nominal value of all the issued shares and securities of the company and have worked full-time in the company (or in the case of a group, for any company or companies in the group) throughout the period of 5 years ending on the date of the gift or inheritance.

Example

GHI Ltd, is a private incorporated company. It has issued only one class of share. These shares are held as follows:

John Buckley (parent)	40%
Mary Buckley (parent)	40%
Michael Buckley (son)	20%

Catherine, who is not related to the Buckleys, has worked full-time (as accounts manager) in the company for 10 years. John makes a gift of 10% of his shares to Catherine. The shares will qualify as relevant business property and obtain business relief.

- Any land or buildings, machinery or plant situate in the State owned by the disponer but used wholly or mainly for the purpose of a business carried on by a company controlled by the disponer or by a partnership of which the disponer was a partner. The shares in the company or the partnership interest must be taken by the beneficiary together with the lands, buildings, machinery or plant in order for those assets to qualify for the relief.

Example

XYZ is a private incorporated company. Only one class of share i.e. 100 €1 ord. has been issued. These shares are held as follows:

John Smyth	60
Tom Murphy	40

The shareholders are not related. The company operates its manufacturing business from a factory premises owned by John Smyth. On 1 October, 2002, John transfers his shares to his son Michael along with the factory premises.

The factory premises will qualify as "relevant business property" as it is owned by a disponer who had control of the company.

If in this example, Tom Murphy had owned the 60 shares and John Smyth had only owned 40, the factory premises would not qualify as "relevant business property" as it was not owned by a disponer who had control of the company.

- Quoted shares or securities of a company carrying on a business provided they would have qualified for the relief if they were unquoted and were:
  - (a) in the beneficial ownership of the disponer immediately prior to the disposition; and
  - (b) were unquoted at 23 May, 1994 or, if later, the date of commencement of that beneficial ownership.

Example

XYZ Ltd. a private limited company owned by John Smyth since 1990 becomes a publicly quoted company in 1997. In September 2002 John Smyth transferred his 60% shareholding in the company to his son Tom. Provided the shares satisfy the conditions for unquoted shares as outlined above, Tom will qualify for business relief.

Are any types of business excluded from the Relief?

Businesses which consist wholly or mainly of one or more of the following:

- dealing in currencies, securities, stocks or shares, land or buildings, or
- making or holding investments

are "excluded businesses" for the purposes of the relief.

In deciding whether a business is wholly or mainly an investment business regard will be had to the following:

- the ratios of asset value and profit attributable to trading and investment respectively;
- the ratio of turnover to investment income;
- whether the employees are engaged more on the trading side than on the investment side and vice versa;
- whether there are any particular reasons for low trading profits;
- the use to which the investments or the income from the investments is put; and
- how the company is described in the annual accounts.

If the business consists "wholly or mainly" of any one of the above excluded businesses, the entire business is denied relief.

If, the business does not consist "wholly or mainly" of an excluded business, the entire business is treated as relevant business property but the part referable to the excluded portion of the business does not attract relief.

Example 1

John makes a gift of his business to Mary. The business is 65% an investment business and 35% a trading business. Mary's benefit does not qualify for business relief.

Example 2

John makes a gift of his business to Mary. The business is 35% an investment business and 65% a trading business. The business is "relevant business property" and Mary will qualify for business relief but only in respect of the trading part of the business i.e. 65%.

Holding Companies

On the assumption that all other conditions for granting the relief are satisfied shares or securities of a holding company will qualify as relevant business property if the business of the holding company consists wholly or mainly in being a holding company for subsidiaries that carry on non-excluded businesses. The value of those shares or securities, for the purpose of the relief will, however, be determined on the basis that any subsidiaries (or associated companies) carrying on excluded businesses are ignored.

Example

ABC Holdings has four wholly owned subsidiaries. While each subsidiary is carrying on a business, one of them, Investments Ltd., is carrying on an investment business. ABC Holdings is valued at €5 million while Investments Ltd. is valued at €1 million. As the business of ABC Holdings will, assuming all other conditions are satisfied, qualify as "relevant business property" but the value of ABC Holdings for the purposes of calculating the relief will be limited to €4 million i.e. the €1 million value of Investments Ltd. will not be included.

Is there a minimum ownership period?

To qualify for the relief the relevant business property must have been comprised in the disposition continuously prior to the date of the gift or inheritance for a minimum period of

- **Two years** in the case of an inheritance, which was taken on the death of the disponer.
- **Five years** in any other case, e.g. a gift or an inheritance taken on the death of a life tenant.

A period of ownership by a disponer's spouse or by a trustee will count for the purposes of satisfying this requirement.

Example 1

Tom dies and leaves his business to George. As George takes his inheritance on the death of Tom the disponer, the two year minimum ownership condition must be satisfied.

Example 2

Pat has owned a business since 1995. In October, 2002 he transfers the property to his son Bill. The five year minimum ownership condition is satisfied and Bill will qualify for business relief on the gift.

Example 3

John dies and leaves his business to his sister Clare for her life and on her death the business is to pass to her son Simon. Clare will qualify for business relief if John was the beneficial owner of the business for two years prior to his death. In order for Simon to qualify for business relief on the death of Clare, the qualifying minimum ownership period is five years. For the purpose of calculating that five year period, two periods are added together i.e.

1. The period prior to John's death when he was the beneficial owner of the property and
2. The period during the life tenancy of Clare.

If the total of these two periods exceed five years, the benefit taken by Simon will obtain business relief.

Example 4

Michael acquired a qualifying business in 1996. He died in 2000 and left the business to his wife Patricia. In 2002, Patricia made a gift of the business to her son Stephen. The five year period applies to the gift and Stephen will qualify for business relief in respect of the gift. The five year period is satisfied as the business property was in the beneficial ownership Michael and his spouse Patricia for a period of six years.

Replacement Property

Where relevant business property has replaced other property within the minimum ownership period, that relevant business property will qualify for the relief if the property it replaced would have qualified as relevant business property (apart from the minimum ownership requirement). In dealing with replacement property, as some time may elapse between the sale of one business and its replacement with another, the minimum ownership periods are extended from two years and five years to three years and six years respectively.

Therefore, in the case of a benefit of the replacing property arising on the death of the disponer, if the original property and the replacing property, have been owned by the disponer for at least two years out of three years immediately preceding the date of that benefit, the replacement property will be deemed to meet the minimum ownership period.

Similarly, in the case of gifts or inheritances arising on other than the death of the disponer, the minimum ownership period requirements would be satisfied if the disponer owned the original and replacement properties for five years out of six.

There is no requirement that the replacement property be of a similar nature to the property it replaced.

Example

Brendan commenced a drapery business in January, 1996. He sold the business in December, 1999 and bought a hardware business in May, 2000. He made a gift of the hardware business to his brother Gerard in November, 2002.

Business relief will apply to the gift of the hardware business, because taken together, Brendan's period of ownership of the drapery business and hardware business amounted to over five years in the six year period prior to the date of the gift.

If the value of the replacement property exceeds the value of the property it replaced the relief will be restricted to what it would have been had the replacement not been made. If, in the above example, the drapery business had been sold for €100,000 and the hardware though bought for €150,000 was worth €180,000 at the valuation date, the relief would be restricted to €120,000 as follows:

$$€180{,}000 \times \frac{€100{,}000}{€150{,}000} = €120{,}000$$

Where the replacement relevant business property consists of land, buildings, plant or machinery situated in the State and owned by the disponer but used wholly or mainly for the purposes of a business carried on by a company controlled by the disponer or by a partnership of which the disponer was a partner, the replaced property (i.e. land, buildings, plant or machinery) must also have been used wholly or mainly for the purposes of the business during the relevant part of the minimum ownership period.

Is there any exception to the minimum ownership period for successive benefits?

If the disponer, or his or her spouse, had taken a gift or inheritance of relevant business property (the earlier benefit) and had died before either he/she or his/her spouse, had owned the property for the required period, the benefit now taken from the disponer (the subsequent benefit) may still qualify for the relief notwithstanding the minimum ownership requirement provided that the earlier benefit qualified for the relief.

Example

In December, 2001 Nuala makes a gift of her hair-dressing business to her niece Clodagh. The gift qualifies for business relief. Clodagh is killed in a car accident in September 2002 and under the terms of her will the business passes to her sister Nora. Despite the fact that Clodagh did not have the business for the minimum ownership period of two years, the benefit taken by Nora will still qualify for business relief.

The subsequent benefit, i.e. the benefit taken by Nora in the example, must be an inheritance. The "quick succession relief" would not apply if Nora had taken a gift of the business from Clodagh.

How will the value of a business carried on by a sole trader or by a partnership be determined for the purposes of the relief?

If the business is carried on by a sole trader or by a partnership the value of the business for the purposes of business relief (but subject to possible adjustment on foot of excepted assets) is the net value. The net value is arrived at by reducing the market value of the assets used in the business (including goodwill) by the market value of any liabilities incurred for the purposes of the business.

In the case of a business carried on by a sole trader every asset owned by the sole trader and used by him or her wholly or mainly for the purposes of the business will be taken into account in arriving at the net value as will all liabilities incurred for the purposes of the business. However, in the case of a partnership, only partnership assets and partnership liabilities will be taken into account. Property owned by a partner but used by the partnership would not be an asset of the partnership. Neither would a personal liability of a partner be regarded as a liability of the partnership.

Will any part of the taxable value of relevant business property which otherwise qualifies for business relief be left out of account when calculating the relief ?

Yes. The value (if any) which is attributable to the following will be ignored:

- any assets not being used for the purposes of the business concerned.

Example 1

Ciaran, who owns all of the shares in STU Ltd., transfers the shares to his daughter Liz. The taxable value of the shares in STU Ltd. is €950,000 but that includes quoted shares valued at €50,000 which are held as an investment.

Relief is calculated as follows :

Taxable Value prior to relief	€950,000
Value attributable to assets not used for the purpose of the business	€ 50,000
Amount of taxable value which can benefit from the relief	€900,000
Relief 90%	€810,000
Taxable Value of qualifying business assets (after relief)	€ 90,000
Add Taxable Value of excepted assets	€ 50,000
Taxable Value of Liz's benefit	€140,000

Where, however, the business concerned is being carried on by a company which is a member of a group (a group includes associated companies as well as subsidiaries), any business assets (i.e. business assets other than investment assets) used wholly or mainly for the purposes of a non-excluded business carried on by any other company in the group will be treated as if it were used for the purposes of the business concerned.

Where only part of the lands or buildings are being used exclusively for the purposes of the business only that part will qualify for business relief e.g. a building where the ground floor is used as a licensed premises and the upper floor for residential purposes. The licensed premises part of the building only will qualify for business relief.

Example 2

John takes an inheritance of a licensed premises from Jim. Jim had lived over the pub. The property is valued at €1,000,000. The residential portion of the property is valued at €150,000.

The residence is not used for the purposes of the business and will not qualify for relief.

Relief is calculated as follows:

Taxable Value prior to relief	€1,000,000.00
Less Value prior to relief	€ 150,000.00
Taxable Value qualifying assets	€ 850,000.00
Relief (90%)	€ 765,000.00
Taxable Value qualifying assets (after relief)	€ 85,000.00
Add excepted asset i.e. Residence	€ 150,000.00
Taxable Value of Jim's benefit	€ 235,000.00

Note: In the event that the building is mortgaged, the mortgage will have to be apportioned between the licensed premises and residence. The portion of the mortgage applicable to the licensed premises should be deducted from the business assets i.e. licensed premises and the portion applicable to the residence deducted from the non-business assets, i.e. residence.

- any business assets which if acquired more than two years prior to the gift or inheritance were not being used wholly or mainly for the purposes of the business for a continuous period of two years prior to the gift or inheritance. However, business assets acquired within two years prior to the gift or inheritance need not be ignored provided that they were being used wholly or mainly for the purposes of the business since the date of acquisition. In other words there is no restriction on the acquisition of new assets by an existing business provided the business itself qualifies for business relief and the assets satisfy the above test.
- any new business acquired by a company (or by a company within the same group) within the minimum ownership period (except to the extent that it would qualify as replacement property).

Example

VWX Ltd., was incorporated in 1993 as a property holding company. In September, 1998 it sold off all its property and purchased a cheese manufacturing business with the proceeds. One of its shareholders makes a gift of her shares in the company to her son on 1 October, 2002. While the shares have been owned for more than five years they still will not qualify for the relief because their value is entirely attributable to the value of the new business.

How is Business Relief calculated?

Business relief is applied to the taxable value of the business. Note that in "Agricultural Relief" (see appendix 2) the relief is applied to the market value of the agricultural property.

The taxable value of the business is arrived at by deducting any liabilities incurred in the operation of the business from the market value of the business assets.

Where a benefit consists of both business and non-business assets, the liabilities incurred in the operation of the business are deducted from the business assets and general debts and any consideration paid for the benefit are, as far as possible, deducted from the non-business assets. An encumbrance on a business property e.g. mortgage must be deducted from the value of the business property. However in the event that there are not enough assets (either business or non-business) to meet all of the business or non-business liabilities any surplus liabilities should be deducted from the business or non-business assets as appropriate (see example 2 below).

Example 1

Joe, a sole trader owns a grocery business. He died in November, 2002 and left his entire estate, which consisted of business and non-business assets, to his brother Barry subject to Barry paying €20,000 to "Concern".

At the valuation date, the estate consisted of the following assets:

Shop (value €300,000 with a mortgage of €100,000), stock-in-trade €50,000, business a/c €10,000, Bank of Ireland deposit a/c €30,000 and dwelling-house (value €150,000)

The liabilities are as follow:

Administration costs €5,000, funeral expenses €3,000 and trade debts €12,000.

The taxable value of the benefit taken by Barry is ascertained as follows:

Gross Non-business Property			**Gross Business Property**		
Bank of Ireland a/c		€ 30,000	Shop		€ 300,000
Dwelling-house		€ 150,000	Stock		€ 50,000
			Business a/c		€ 10,000
Total		€ 180,000	Total		€ 360,000
Less: Admin. Costs	€5,000		Less: Trade Debts	€ 12,000	
Funeral Expenses	€3,000	€ 8,000	Mortgage	€100,000	€ 112,000
Incumbrance Free Value		€ 172,000	Incumbrance Free Value		€ 248,000
Less: Consideration		€ 20,000			
Taxable Value		€ 152,000	Taxable Value		€ 248,000
			Business Relief (90%)		€ 223,200
			Taxable Value (after relief)		€ 24,800
Taxable Value of Barry's benefit (Non-business Property + Business property)					€ 176,800

Example 2

Pat dies and leaves his entire estate to Mary. The estate consists of a business valued at €500,000 and Guinness shares valued at €10,000. The business liabilities amount to €30,000 and the funeral and administration costs amount to €20,000.

Gross Non-business Property		**Gross Business Property**		
Guinness Shares	€10,000	Business		€ 500,000
Less: Costs	€20,000	Less: Business Liabilities	€30,000	
Deficit	€10,000	Non-business Deficit	€10,000	€ 40,000
Taxable Value	Nil	Taxable Value		€ 460,000
		Business relief (90%)		€ 414,000
		Taxable Value (after relief)		€ 46,000

Example 3

John Lally died in December, 2002 and left his entire estate to his son Pat. His estate consisted of 20% of the shareholding of John Lally Motors Ltd and the premises (owned by John) from which the business was operating.

John Lally Motors Ltd. was set up in 1990 by John Lally and four other partners.

Pat Lally has worked for the company in a managerial capacity since leaving school in 1993.

At the valuation date the premises were worth €1,000,000 and the 20% shareholding was valued at €5,000,000. The administration and funeral expenses amount to €20,000 and John Lally's share of the business debts amount to €100,000.

The value of €5,000,000 for the shares is attributable to €1,000,000 (investments), €2,000,000 (stock), €1,500,000 (goodwill) and €500,000 (plant and machinery) of which half was purchased in January, 2002.

Pat Lally qualifies for business relief as he has at least 10% of the nominal value of the issued shares of the company and has worked for the company for five years prior to the date of inheritance.

Gross Non-business Property		**Gross Business Property**		
Premises	*€1,000,000	Stock		€ 2,000,000
Investments	**€1,000,000	Goodwill		€ 1,500,000
		Plant & Machinery	***	€ 500,000
Total	€ 2,000,000	Total		€ 4,000,000
Less Costs	€ 20,000	Less business Debts		€ 100,000
Taxable Value	€ 1,980,000	Taxable Value		€ 3,900,000
		Business Relief (90%)		€ 3,510,000
		Taxable Value (after relief)		€ 390,000
Taxable Value of Pat's Benefit (Non-business Property + Business Property)				€ 2,370,000

* Premises does not qualify for relief as John Lally did not have control of the company (only 20% of shareholding and other 80% held by non family members).

** Investments are an excluded asset.

*** All of the plant and machinery qualifies for relief even though 50% was only purchased eleven months before the date of inheritance (that 50% was used wholly or mainly for the purposes of the business since their acquisition in January and the business itself qualifies for relief).

Can the relief be clawed back?

Yes.

- If the business, or any business which replaced it ceases to trade within a period of six years after the date of gift or inheritance unless the business is replaced within one year by other relevant business property. However, there will be no clawback of relief where the business ceases to trade by reason of bankruptcy or as a result of a bona fide winding-up on the grounds of insolvency.
- If the business or shares or securities are sold or redeemed or compulsorily acquired and are not replaced within one year by other relevant business property.

However there is no clawback where the beneficiary dies before the event giving rise to the clawback occurs. In the event of a clawback of relief a revised return (Form IT38) must be delivered. Interest will arise on the additional tax if it is not paid within four months of the event giving rise to the clawback.

An explanation of some differences between Agricultural Relief and Business Relief

- There is no minimum ownership period for agricultural relief while there is a two year (inheritance) or five year (gift) minimum ownership period for business relief.
- Agricultural relief applies to the market value of property while business relief applies to the taxable value.
- Agricultural relief applies to the farm-house but business relief does not.
- Non-agricultural assets can be used to purchase agricultural assets, in certain circumstances, and can qualify for relief. There is no such provision for business relief.
- Unsecured liabilities are apportioned pro rata between agricultural and non-agricultural assets while in business relief only liabilities applicable to the business are deductible from the business assets and all other liabilities (as far as possible) are deductible from the non-business assets.
- There must be a farming business. It is not sufficient that there is an asset that could be used for a business e.g. property.
- There is no 80% or domicile test for business relief.
- A beneficiary does not have the option of claiming either agricultural or business relief. If the property is agricultural and the beneficiary qualifies as a farmer, then agricultural relief must be claimed. It is only in the event of failure to qualify for agricultural relief that business relief can be claimed on agricultural property.

Appendix 4 Dwelling-house Exemption - Notes and Examples

Legislation - Section 86, Capital Acquisitions Tax Consolidation Act, 2003.

What is a dwelling-house?

A dwelling-house is any "building or part of a building ..... used or suitable for use as a dwelling" and it includes grounds of up to one acre occupied and enjoyed with the dwelling.

What is the relief?

The dwelling-house will be exempt from tax provided certain conditions are met.

Dwelling-house relief applies to gifts and inheritances.

Conditions for the relief

The following conditions must be met:

- The beneficiary must have occupied the dwelling-house continuously as his or her only or main residence for a period of three years prior to the date of the gift or inheritance. Where the dwelling-house has directly or indirectly replaced other property, this condition may be satisfied where the beneficiary has continuously occupied both properties as his or her only or main residence for a total period of three out of the four years immediately prior to the date of the gift or inheritance.
- The beneficiary must not, at the date of the gift or inheritance, be beneficially entitled to any other dwelling-house or to an interest in any other dwelling-house.
- The beneficiary must continue to occupy the dwelling-house as his or her only or main residence for six years from the date of the gift or inheritance. Where the dwelling-house is directly or indirectly replaced by other property, this condition may be satisfied where the beneficiary continuously occupied both properties as his or her only or main residence for a total period of six out of the seven years commencing on the date of the gift or inheritance.

This latter condition does not apply if the beneficiary was over 55 years at the date of the gift or inheritance or has died.

A beneficiary, absent during any time through an obligation to work abroad is considered to remain in continuous occupation of that dwelling-house.

How is the relief claimed?

The market value of the dwelling-house should be entered at Page 3, Part 7, Column C, Item (a) of the return.

Note that any liabilities/consideration payable out of the dwelling-house are not deductible.

Clawback of relief

Relief will be withdrawn if the beneficiary (under 55 years) does not continue to occupy the property for six years after the date of the gift or inheritance (seven years for replacement property)

Or

the property is sold within the six year period and not replaced. However, the relief will not be withdrawn, if the sale occurs because the beneficiary requires long term medical care in a hospital or nursing home or is over 55 years.

In the event of a clawback of relief a revised return (Form IT38) must be delivered. Interest will arise on the additional tax if it is not paid within four months of the event giving rise to the clawback.

Maximum relief available on replacement property

The maximum relief available, where the beneficiary is under 55 years and sells the property and replaces it with another dwelling-house is the relief that would have been available on the new property.

Example

John (aged 30) inherits a house valued €500,000. He qualifies for dwelling-house exemption. He sells the house and buys an apartment for €300,000. The exemption on the €300,000 will be retained but there will be a clawback on the difference in the value i.e. €200,000 and John will be assessed for tax on this amount.

Appendix 5 Heritage Property Relief - Notes and Examples

Legislation - Sections 77 and 78, Capital Acquisitions Tax Consolidation Act, 2003.

There are essentially two broad categories of heritage property which qualify for Capital Acquisitions Tax relief:

- Heritage Objects
- Heritage Houses and Gardens

Different qualifying conditions apply to each category.

Heritage Objects

What objects qualify for relief?

Any pictures, prints, books, manuscripts, works of art, jewellery, scientific collections or other things of that nature -which appear to the Revenue Commissioners to be of national, scientific, historic or artistic interest.

What are the conditions for relief?

- the objects must be kept permanently in the State (except for temporary absences approved by the Revenue Commissioners);

  Note that any work of art normally kept outside the State, but which is in the State at the date of death of the disponer will be exempt from tax where the Revenue Commissioners are satisfied that it was brought into the State solely for public exhibition, cleaning or restoration.

- reasonable facilities for viewing must be allowed to members of the public or to recognised bodies or associations of persons; and
- the objects must not be held for the purposes of trading (e.g. antique dealing, hotel or restaurant trade).

What is the extent of the relief?

Any object which satisfies the above conditions - and which is part of a gift or inheritance at the date of such gift or inheritance and at the valuation date - will be entirely exempt from Capital Acquisitions Tax. The beneficiary would simply exclude the value of the qualifying objects when computing any tax due. **Neither is the value taken into account for aggregation purposes.**

Any liabilities or consideration payable out of the exempt property are not deductible (see the example at **Part 7, Taxable Value of Benefit, Page 24,** of this Guide).

How is the relief claimed?

Enter the market value of the exempt property at Page 3, Part 7, Column C, Item (b) of the return.

However, the claim for relief may be subject to audit and in that event the following may be required:

- a comprehensive inventory and valuation of the objects which are the subject of the claim;
- a statement outlining how the various conditions have been satisfied (e.g. full details of viewing facilities afforded to the public and/or recognised bodies);
- the address or addresses at which the objects may be inspected. (The Revenue Commissioners may take advice from experts in bodies such as the National Gallery of Ireland or National Museum of Science and Art before arriving at a decision as to whether an object is of national, scientific, historic or artistic interest);
- even if the benefit consists entirely of qualifying objects a return, in which the relief is claimed, must be delivered.

Can the relief be clawed back?

Yes. The exemption will cease to apply to an object if any exempt object -

- is sold within six years of the valuation date and before the death of the beneficiary (except for a private treaty sale to the National Gallery of Ireland, National Museum of Science and Art or any other similar national institution, any university in the State, a local authority or the Friends of the National Collections of Ireland); or
- is, other than with permission, moved outside the State or the reasonable viewing facilities referred to previously are withdrawn at any time after the valuation date and before -

(a) the object is sold;

(b) the beneficiary dies; or

(c) the object is again passed on by way of an absolute gift or inheritance to a beneficiary who is not the spouse of the first beneficiary.

In the event of a clawback of relief a revised return (Form IT38) must be delivered. Interest will arise on the additional tax if it is not paid within four months of the event giving rise to the clawback.

Heritage Houses and Gardens

What houses and gardens qualify for relief?

Any house or garden in the State - which appears to the Revenue Commissioners to be of national, scientific, historic or artistic interest.

What are the conditions for relief?

- reasonable facilities for viewing must have been allowed to the public during the three years prior to the gift or inheritance;
- reasonable facilities for viewing to the public must be allowed on an on-going basis; and
- the property must not be held for the purpose of trading.

What does "reasonable facilities for viewing" mean?

The minimum facilities which will be regarded as reasonable are -

- access to the house or garden must be available for a minimum of 60 days in a year, of which 40 days must be in the months of May to September inclusive (subject to reasonable temporary closure for necessary repairs, maintenance or restoration);
- 10 of 40 days (public access requirements) in period 1 May - 30 September must fall on a Saturday or Sunday;
- a minimum of four hours must be available for viewing, at a reasonable time and in a reasonable manner, on each day on which access is afforded;
- access must be to the whole or to a substantial part of the house or garden;
- the price of access must be reasonable;
- adequate notice of the opening hours and of the entrance charge must be given to the public;
- Bord Failte must be notified of full details of opening hours and admission prices before 1 January each year.

What is the extent of the relief?

Any house or garden which satisfies the above conditions and which is part of a gift or inheritance at the date of such gift or inheritance and at the valuation date will be entirely exempt from Capital Acquisitions Tax. The value of the house and garden would be excluded when computing any tax due. Neither is the value taken into account for aggregation purposes.

How is the relief claimed?

The market value of the house and garden should be inserted at Page 3, Part 7, Column C, item (b) of the return.

Even if the benefit consists entirely of a qualifying house or garden, a return, in which the relief is claimed, must be delivered.

Any liabilities or consideration payable out of the exempt property are not deductible (see the example at **Part 7, Taxable Value of Benefit, Page 24** of this Guide).

However, the claim for relief may be subject to audit and in that event the following may be required:

- a statement outlining how the conditions have been met in the three years prior to the date of the gift or inheritance and how they will be met in the future; and
- the address of the house or garden (advice may be taken from the Office of Public Works before arriving at a decision as to whether the house/garden is of national, scientific, historic or artistic interest).

Companies and Heritage property - Section 78, Capital Acquisitions Tax Consolidation Act, 2003.

If a private company owns heritage property, relief will apply to the shares in the private company to the extent that their value is derived from the heritage property, provided that;

- the benefit consists of shares in the company both at the date of the gift/inheritance and at the valuation date;
- the conditions relating to facilities for viewing etc. are met; and
- the beneficiary, after taking the gift or inheritance, controls the company.

If company shares qualify for business relief, then the proportion of the shares attributable to the heritage property is not taken into account in determining what proportion of the shares is attributable to the relevant business property.

Can the relief be clawed back?

Yes, the position is the same as that applying to heritage objects but obviously the question of moving the property outside the State does not arise.

In relation to shares, where the shares (or the underlying heritage property) are sold or where the facilities for viewing provisions are breached, the position is broadly similar to that applying to gifts/inheritances consisting of heritage property.

In the event of a clawback of relief a revised return (Form IT38) must be delivered. Interest will arise on the additional tax if it is not paid within four months of the event giving rise to the clawback.

Appendix 6 Other Reliefs/Exemptions - Notes and Examples

1. Exemption of Certain Securities

Legislation - Section 81, Capital Acquisitions Tax Consolidation Act, 2003.

Government securities and securities issued by certain local authorities and statutory bodies are exempt from either Gift or Inheritance Tax if they are taken by a beneficiary who is neither domiciled nor ordinarily resident in the State. This exemption is not available in relation to discretionary trust tax.

The exemption also applies to authorised "unit trust schemes" provided the assets in the unit trust are confined to securities covered by the exemption.

Conditions for relief

- the security or units must be comprised in the benefit both at the date of the benefit and at the valuation date;
- the security or units must be comprised in the disposition continuously for a period of fifteen years immediately before the date of the benefit if they were acquired on or after 24 February, 2003 (if they were acquired between 15 February 2001 and 24 February 2003 the period is six years and prior to 15 February 2001 the period is three years); and
- the beneficiary must be neither domiciled nor ordinarily resident in the State at the date of the benefit.

Note that if a beneficiary who is neither domiciled or ordinarily resident in the State takes Government securities or units from a disponer who is neither domiciled nor ordinarily resident in the State at the date of the disposition (irrespective of the disponer's domicile or ordinary residence at the date of the gift/inheritance) they will qualify for exemption even if the three year/six year/fifteen year condition is not complied with.

Example 1

John, who was domiciled and ordinarily resident in the State, died on 1 October, 2002 and left his entire estate including Government Stock to his cousin Joe who was domiciled and ordinarily resident in France. The Government Stock were purchased by John in 1994. As John owned the Government Stock for at least three years prior to his death, they are exempt from Inheritance Tax.

If John had purchased the stock in March 2000, they would not qualify for relief as he did not own them for three years prior to his death.

Example 2

Mary, who is domiciled and ordinarily resident in England, purchased Government Stock in January, 2000. On 1 December 2002 she made a gift of the shares to her nephew David who was also domiciled and ordinarily resident in England.

The shares qualify for exemption, even though Mary did not own them for three years, as both Mary and David are domiciled and ordinarily resident outside of the State.

Example 3

Tony who died in 1992 by his will left his residuary estate to his sister Mary for life and on her death to her daughter Sinead who is domiciled and resident in Spain. In 1995 the trustees of the settlement purchased Government Stock. Mary, the life tenant died on 1 September, 2002. The Government Stock which forms part of the residue, will qualify for exemption from Inheritance Tax as it has been comprised in the disposition continuously for a period of three years immediately prior to the date of the inheritance, i.e. 1 September, 2002 because it was comprised in the settlement since 1995.

It should be noted that exempt Government Stocks may have to bear a proportion of liabilities, costs and expenses and in that event, the proportion of the liabilities etc. referable to the exempt stock is not deductible.

2. Exemption relating to qualifying expenses of incapacitated persons

Legislation - Section 84, Capital Acquisitions Tax Consolidation Act, 2003.

Where a benefit is taken exclusively for the purpose of discharging qualifying expenses of a person permanently incapacitated by reason of physical or mental infirmity, that benefit is exempt from Capital Acquisitions Tax provided the Revenue Commissioners are satisfied that the benefit was or will be applied for such a purpose.

"Qualifying Expenses" are defined as expenses relating to medical care including the cost of maintenance in connection with such medical care.

3. Exemption of payments relating to retirement

Legislation - Section 80, Capital Acquisitions Tax Consolidation Act, 2003.

Payments made to an employee out of funds provided by the employer by way of retirement benefit, redundancy payment or pension are exempt from Gift Tax. However, if the employee is a relative of the employer or the employer is a private company and the employee is deemed to control the company within the meaning of section 27 of the Act, the Revenue Commissioners may disallow the exemption to the extent that they consider the payment excessive.

In the event that any benefit is taken by a beneficiary of the employee under a superannuation scheme established solely or mainly for persons employed in a trade or profession, that benefit will be deemed to be taken from the employee and not from the employer.

4. Exemption of certain receipts

Legislation - Section 82, Capital Acquisitions Tax Consolidation Act, 2003.

Certain receipts are exempt from Capital Acquisitions Tax;

- the receipt by a person of any sum bona fide by way of compensation or damages for any wrongdoing or injury suffered by him in his person, property, reputation or means of livelihood, e.g. damages for personal injuries as a result of a car accident.
- the receipt by a person of any sum bona fide by way of compensation or damages for any wrong or injury resulting in the death of any other person, e.g. damages awarded to a child arising out of the accidental death of a parent.
- the receipt by a person of any sum bona fide by way of winnings from betting or from any lottery, sweepstake or game with prizes.
- any benefit arising out of -
  - (1) the payment to the Official Assignee in Bankruptcy of money which has been provided by friends, or which represents property provided by friends of a bankrupt; **or**
  - (2) a remission or abatement of debts by the creditors of a bankrupt to enable the bankrupt to fulfil an offer of composition after bankruptcy in accordance with the provisions of section 39 of the Bankruptcy Act, 1988;

    and
  - (3) similar benefit in the case of friends or creditors of an arranging debtor where matters have not progressed to a formal bankruptcy stage.
- the receipt in the lifetime of the disponer, by a spouse or child of the disponer or a person in relation to whom the disponer stands in loco parentis, of money or monies worth for support, maintenance or education provided it would be regarded as normal expenditure and is reasonable having regard to the financial circumstances of the disponer.

After the death of the disponer, payments for maintenance, support and education of a minor child of the disponer are exempt from Inheritance Tax if the child's other parent is also dead.

5. Exemption of dispositions made by the Donee or Successor

Legislation - Section 83, Capital Acquisitions Tax Consolidation Act, 2003.

Tax is not chargeable where the benefit taken by the beneficiary is under a disposition made by himself.

Example

David makes a gift of property to his mother Bridie for life and on her death the property was to revert to David. On the death of Bridie, David inherits the property but it is exempt from Inheritance Tax because he takes the benefit from himself.

Gifts between "Associated Public Companies" are exempt from tax where both companies are members of a 90% group i.e. one company must be beneficially entitled to at least 90% of the assets of the other on a winding up or a third company must be beneficially entitled to at least 90% of the assets of each of them on a winding up.

6. Exemption in relation to retirement benefits

Legislation - Section 85, Capital Acquisitions Tax Consolidation Act, 2003.

Any balance of an approved retirement fund which passes on the death of the disponer or the disponer's spouse to a child aged 21 years or over is exempt from Inheritance Tax but is chargeable to Income Tax.

If the child is under 21 years, there is no charge to Income Tax but the benefit is liable to Inheritance Tax.

7. Pre 1 April, 1975 Marriage Settlements

Legislation - Paragraph 8, Part 1, Schedule 2, Capital Acquisitions Tax Consolidation Act, 2003.

This relief applies to certain marriage settlements in relation to benefits taken by grandchildren of the disponer. The grandchild takes the group threshold of a child i.e. Group A.

The conditions for relief are as follows:

- the disposition must have been made prior to 1 April, 1975;
- the consideration for the disposition was the marriage of the parents of the beneficiary;
- the disponer is a grand-parent of the beneficiary;
- the parent or parents of the beneficiary must have been entitled to a limited interest in the settlement property.

Example

In 1974, in consideration of the marriage of his son Owen to Helen, Peter transfers his lands to Owen for life and on his death, if she survives him, to Helen for her life with remainder to any child or children of the marriage as the spouses jointly or the survivor of them should appoint and in default of the appointment to the children equally.

Owen died in 1990 and the lands passed to Helen for her life. Helen died in 2002 and in her will she appointed the lands to her daughter Rose. The disponer in relation to Rose's inheritance is her grand-father Peter. However, Rose will have a Group A threshold instead of the normal Group B threshold for a grandchild.

8. Exemption for Charities

Legislation - Section 76, Capital Acquisitions Tax Consolidation Act, 2003.

A benefit taken for public or charitable purposes is exempt from Capital Acquisitions Tax once the Revenue 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.

Regardless of the residence of the charity, an exemption will be given provided the charity is recognised as such by the law of the State. The property can be applied in or outside of the State.

Benefits received by a person from a charity are also exempt e.g. the recipient of a scholarship from an educational trust.

The Act does not provide any definition of "charitable purposes". However, general law groups charitable purposes into four categories viz:

- the relief of poverty;
- the advancement of education;
- the advancement of religion;
- other purposes beneficial to the community, not falling within the other three categories.

9. Inheritance taken by Parent from Child

Legislation - Section 79, Capital Acquisitions Tax Consolidation Act, 2003.

If a parent takes an absolute inheritance from a child, that parent has a Group A threshold. However, if in the previous five years that child had received a non-exempt gift (in excess of €1,270/€3,000) or inheritance from either parent, the inheritance taken by the parent will be exempt if it is taken on the death of that child.

Example

Philip receives a gift of €10,000 from his mother in 1999. Philip dies in 2002 and leaves his entire estate i.e. €1,000,000 to his father. The inheritance taken by the father is exempt.

10. Exemption of Certain Policies of Assurance

Legislation - Section 74, Capital Acquisitions Tax Consolidation Act, 2003.

Certain policies of life assurance issued by companies located in the International Financial Services Centre and by domestic life companies are exempt from Capital Acquisitions Tax. In order to qualify for the exemption the disponer and beneficiary must both be domiciled and resident abroad. However, if the policy was purchased prior to 15 February, 2001, it is sufficient that the proper law at the date of the disposition is foreign even if the disponer is domiciled and resident in Ireland.

11. Exemption of Specified Collective Investment Undertakings

Legislation - Section 75, Capital Acquisitions Tax Consolidation Act, 2003.

Units in any collective investment undertaking located in the International Financial Services Centre or in the Shannon Customs-Free Airport Zone are exempt from Capital Acquisitions Tax. The exemption also applies to units in Investment Undertakings which qualify for the new collective funds regime introduced by Section 58, Finance Act, 2000. In order to qualify for the exemption, the disponer and beneficiary must both be domiciled and resident abroad. However, if the units concerned were purchased prior to 15 February, 2001, it is sufficient that the proper law at the date of the disposition is foreign even if the disponer is domiciled and resident in Ireland.

Appendix 7 Limited Interests - Notes and Examples

As explained in Part 3. 7- Nature of Benefit - where less than absolute ownership is conferred by a benefit, a limited interest is taken. A limited interest may, for example, be a life interest or an interest for a period certain.

Where a benefit is a limited interest, its taxable value and hence the amount of tax payable, is less than it would be if an absolute interest was taken. In essence, because the benefit is not absolute, the beneficiary will not be taxed on the full market value of the property. The value of the property for tax purposes in such cases will depend on a number of things:

In the case of a life interest -

- on the age and gender of the beneficiary.

In the case of an interest for a period certain -

- on the number of years for which the benefit is taken

Actuarial factors (covering age, gender and the number of years for which a benefit is taken) to be used in determining the taxable value of a limited interest are set out in the Schedule 1, Capital Acquisitions Tax Consolidation Act, 2003 and are reproduced in **Appendix 7, (Pages 63, 64 and 65)**.

If you look at Part II, Table A on **Pages 63 and 64** you will notice a number of things:

- the younger the beneficiary, the higher the actuarial factor and, therefore, the closer to the full market value the benefit will be;
- the older the beneficiary, the smaller the factor and, therefore, the smaller the taxable value of the benefit;
- the factors are higher for women than for men on the basis that, statistically, women live longer than men.

The examples following illustrate, using the actuarial factors, where appropriate, the calculation of the taxable value in the case of an absolute interest, a life interest and an interest for a period certain.

Example 1

Absolute Interest

Mary Jones inherits absolutely the residue of the estate of Barry Hickey consisting of €100,000 in stocks and shares on condition that she pay €15,000 to a specified Irish charity. The costs and testamentary expenses of the estate amounted to €10,000. The taxable value of Mary's absolute interest is calculated as follows:

Market Value of property	€100,000
Less liabilities costs and expenses	€ 10,000
Incumbrance-free value	€ 90,000
Less deduction for consideration	€ 15,000
Taxable value	€ 75,000

Example 2

Life Interest

Brian Smyth, who is 37 years old, takes a life interest in investments from Colette Murphy. The market value of the investment fund at the valuation date is €500,000. The costs are €1,200 and it is a condition of the inheritance that Brian pay €2,000 to Colette's niece.

The calculation of the taxable value of the inheritance is as follows:

Market Value	€500,000
Less liabilities, costs and expenses	€ 1,200
Incumbrance-free value	€498,800
Multiply by appropriate age factor* x	0.8626
Value of limited interest	€430,265
Less consideration	€ 2,000
Taxable value	€428,265

*See Table A on **Page 63** for the age factor

Example 3

Period Certain

Michael Donnelly transferred a house to his brother, Alan, until his niece, Lucy, attains 21 years of age when the house is to become Lucy's. The market value of the house is €100,000. Alan incurs costs of €3,000. The date of the gift is 4 March, 1997 and Lucy will be 21 on 11 June 2002.

In calculating the taxable value of Alan's gift in this case, one must establish the period certain for which Alan will take the benefit - in this case it is for five years and 99 days.

Market value	€100,000
Less liabilities, costs and expenses	€ 3,000
Incumbrance-free value	€ 97,000

Calculation of the limited interest for the period certain

Multiply by appropriate factor* for 5 years	i.e. €97,000 x .2869 = €27,829
Multiply by appropriate factor* for 6 years	i.e. €97,000 x .3335 = €32,350
Difference	€4,521

Value of limited interest

For five years		€27,829
For 99 days	$\frac{€4,521 \times 99}{365}$	€ 1,226
Total		€29,055
Taxable Value		€29,055

* See Table B on Page 65.

APPENDIX Schedule 1, Capital Acquisitions Tax Consolidation Act, 2003 - VALUATION OF LIMITED INTERESTS

Rules relating to the valuation of limited interests utilising Tables A and B in Parts 2 and 3 of this Schedule.

1. **The value of an interest for a single life in a capital sum shall be that sum multiplied by the factor, contained in column 3 or 4 respectively of Table A, which is appropriate to the age and gender of the person in respect of the duration of whose life the interest is to be valued.**

Example

Siobhan (age 50) inherits a life interest in a house valued at €200,000. The administration costs are €10,000.

Market value	€200,000
Less costs	€ 10,000
Incumbrance-free value	€190,000
Multiply by factor for female aged 50 i.e. 0.7791 (see Col. 4, Table A)	€148,029
Taxable Value of Inheritance	€148,029

2. **The value of an interest in a capital sum for the joint continuance of two lives shall be the value of an interest in that sum for the older life, ascertained in accordance with rule 1, multiplied by the joint factor in column 2 of Table A which is appropriate to the younger life.**

Example

A house valued at €300,000 is left to John (aged 63) and Tom (aged 60) for the joint continuance of the two lives.

Market value	€300,000.00
Multiply by factor for older life i.e. 0.5332 (Col. 3, Table A) X joint factor younger life i.e. 0.86 (Col. 2, Table A)	€137,565.60

The taxable value of the inheritance taken by both John and Tom is €68,782.80 each.

Note that normally when the first beneficiary dies, the surviving life tenant continues to have an interest in the property, either absolutely or for life (depending on the wording of the will or deed) and a further claim for inheritance tax would arise at that stage.

If, in the above example, John died after seven years, and Tom, under the terms of the will, was to continue to have a life interest in the property, a claim for inheritance tax on the entire property passing to Tom for life, from the original disponer would arise.

Example

Market value (say)	€400,000.00
Multiply by factor for Tom (now aged 67) i.e. 0.4673	€186,920.00

This is a further benefit taken by Tom which may aggregate with the prior benefit of €68,782.80.

This would also apply in the situation covered by rule 3 below when any of the joint life tenants die.

3. The value of an interest in a capital sum for the joint continuance of three or more lives shall be the value of an interest in that sum for the joint continuance of the two oldest of those lives, ascertained in accordance with rule 2 multiplied by the joint factor of the youngest of those lives.

Example

Michael (aged 70), Mary (aged 60) and Clare (aged 50) inherit a house valued at €500,000 for the joint continuance of their lives.

The taxable value of the benefit is calculated as follows:

(a) The value of the interest in the house for the joint continuance of the two oldest lives is:

€500,000 X 0.4173 (Michael - Col. 3, Table A) X 0.86 (Mary - Col. 2, Table A) = €179,439.

(b) this value i.e. €179,439 is multiplied by the joint factor of the youngest life i.e. 0.92 (Clare - Col. 2, Table A) = €165,083.88.

The taxable value of the inheritance taken by Michael, Mary and Clare is €55,027.96 each.

4. The value of an interest in a capital sum for the longer of two lives shall be ascertained by deducting from the total of the values of an interest in that sum for each of those lives, ascertained in accordance with rule 1, the value of an interest in the capital sum for the joint continuance of the same two lives, ascertained in accordance with rule 2.

Example

Martina (aged 70) and Pat (aged 60) inherit a house valued at €400,000 for the longer of their two lives.

The taxable value of their benefits is calculated as follows:

Value for Martina = €400,000 x 0.4679 is	€187,160.00
Value for Pat = €400,000 x 0.5809 is	<u>€232,360.00</u>
The sum of the values is	€419,520.00
Less the value for the joint continuance of two lives ascertained in accordance with Rule 2 i.e. €400,000 x 0.4679 x 0.86 is	<u>€160,957.60</u>
Value of interest in €400,000 for the longer of two lives is	€258,562.40

The taxable value of the inheritance taken by Martina and Pat is €129,281.20 each.

5. Where an interest is given for the longest of more than two lives, it shall be valued, in accordance with rule 4, as if it were for the longer of the two youngest of those lives.

Example

Martina (aged 70), Pat (aged 60) and Tony (aged 50) inherit a house valued at €600,000 for the longer of their lives.

The taxable value of their benefit is calculated as follows:

Value for Pat = €600,000 x 0.5809 is	€348,540.00
Value for Tony = €600,000 x 0.7287 is	<u>€437,220.00</u>
The sum of the values is	€785,760.00
Less the value for the joint continuance of two lives ascertained in accordance with Rule 2 i.e. €600,000 x 0.5809 x 0.92 is	<u>€320,656.80</u>
Value of an interest in €600,000 for the longer of more than two lives is	€465,103.20

The taxable value of the inheritance taken by Martina, Pat and Tony is €155,034.40 each.

6. The value of an interest in a capital sum for a period certain shall be the aggregate of -

(a) the value of the capital sum, multiplied by the factor in Table B which is appropriate to the number of whole years in that period (or zero if that period is less than a whole year); and

(b) where the period is not an integral number of years, a fraction (of which the numerator is the number of days in excess of the number of whole years, if any, in that period and the denominator is 365) of the difference between -

(i) the value of an interest in the capital sum for one year longer than the number of whole years, if any, in the period; **and**

(ii) the value ascertained under the provisions of paragraph (a) (or zero, where so provided in the said paragraph)

Example 1

Margaret (aged 25) is given a house valued at €100,000 until she is 30 years old i.e. for five years.

€100,000 X 0.2869 (Col. 2, Table B) = €28,690

Example 2

Janice (aged 25 years and 265 days) receives a gift of a house, valued at €100,000 until her 30th birthday i.e. for 4 years and 100 days.

The taxable value of the inheritance is calculated as follows:

Value of €100,000 for five years is €100,000 x 0.2869 (Col. 2, Table B) is	€28,690.00
Value of €100,000 for four years is €100,000 x 0.2370 (Col. 2, Table B) is	€23,700.00
Difference in value of €100,000 between four years and five years is	€ 4,990.00
Value for 100 days is $\frac{€4,990.00 \times 100}{365}$ = €1,367.12	
Value of €100,000 for 4 years and 100 days is €23,700.00 + €1,367.12 =	€25,067.12

7. In the case of a limited interest where the interest is for a life or lives, but is guaranteed for a period certain, the value shall be the higher of -

(a) the value of an interest for such life or lives, ascertained in accordance with the appropriate rule in this Part of this Schedule

and

(b) the value of an interest for a period certain, ascertained in accordance with rule 6.

Example

Mary (aged 40) receives a pension of €20,000 per annum for her life. The pension is guaranteed for 10 years. The capital value is say €250,000.

The value is ascertained as the higher of:

(a) €250,000 X 0.8683 (female aged 40) is €217,075

(b) €250,000 X 0.4913 (10 years certain) is €122,825

In this case the life interest is more valuable and tax would be chargeable on €217,075.

If Mary was aged 70, the value of the life interest would be €250,000 X 0.4679 = €116,975.

The value of €122,825 for the 10 year period certain is higher and tax would be payable on that amount.

8. The value of a limited interest for which the other rules in this Part of this Schedule provide no method of valuing shall be ascertained as if the interest taken were a series of absolute interests in the property applied in satisfaction of the interest from time to time, taken as separate gifts or inheritances as the case may be.

Example

Where the amount of an annuity payable to a beneficiary has to be determined annually by the trustee the amount payable can only be determined each year. Each payment made to the beneficiary will be treated as a separate benefit on the date the annuity is paid.

APPENDIX Schedule 1, Capital Acquisitions Tax Consolidation Act, 2003 - VALUATION OF LIMITED INTERESTS

PART 2 TABLE A

1	2	3 **Male Age Factor**	4 **Female Age Factor**
Years of age	Joint Factor	Value of an interest in a capital of €1 for a male life aged as in column 1	Value of an interest in a capital of €1 for a female life aged as in column 1
0	.99	.9519	.9624
1	.99	.9767	.9817
2	.99	.9767	.9819
3	.99	.9762	.9817
4	.99	.9753	.9811
5	.99	.9742	.9805
6	.99	.9730	.9797
7	.99	.9717	.9787
8	.99	.9703	.9777
9	.99	.9688	.9765
10	.99	.9671	.9753
11	.98	.9653	.9740
12	.98	.9634	.9726
13	.98	.9614	.9710
14	.98	.9592	.9693
15	.98	.9569	.9676
16	.98	.9546	.9657
17	.98	.9522	.9638
18	.98	.9497	.9617
19	.98	.9471	.9596
20	.97	.9444	.9572
21	.97	.9416	.9547
22	.97	.9387	.9521
23	.97	.9356	.9493
24	.97	.9323	.9464
25	.97	.9288	.9432
26	.97	.9250	.9399
27	.97	.9209	.9364
28	.97	.9165	.9328
29	.97	.9119	.9289
30	.96	.9068	.9248
31	.96	.9015	.9205
32	.96	.8958	.9159
33	.96	.8899	.9111
34	.96	.8836	.9059
35	.96	.8770	.9005
36	.96	.8699	.8947
37	.96	.8626	.8886
38	.95	.8549	.8821
39	.95	.8469	.8753
40	.95	.8384	.8683
41	.95	.8296	.8610
42	.95	.8204	.8534
43	.95	.8107	.8454
44	.94	.8005	.8370
45	.94	.7897	.8283
46	.94	.7783	.8192
47	.94	.7663	.8096
48	.93	.7541	.7997
49	.93	.7415	.7896
50	.92	.7287	.7791
51	.91	.7156	.7683

APPENDIX Schedule I, Capital Acquisitions Tax Consolidation Act, 2003 - VALUATION OF LIMITED INTERESTS

PART 2 TABLE A CONTINUED

1 Years of age	2 Joint Factor	3 **Male Age Factor** Value of an interest in a capital of €1 for a male life aged as in column 1	4 **Female Age Factor** Value of an interest in a capital of €1 for a female life aged as in column 1
52	.90	.7024	.7572
53	.89	.6887	.7456
54	.89	.6745	.7335
55	.88	.6598	.7206
56	.88	.6445	.7069
57	.88	.6288	.6926
58	.87	.6129	.6778
59	.86	.5969	.6628
60	.86	.5809	.6475
61	.86	.5650	.6320
62	.86	.5492	.6162
63	.85	.5332	.6000
64	.85	.5171	.5830
65	.85	.5007	.5650
66	.85	.4841	.5462
67	.84	.4673	.5266
68	.84	.4506	.5070
69	.84	.4339	.4873
70	.83	.4173	.4679
71	.83	.4009	.4488
72	.82	.3846	.4301
73	.82	.3683	.4114
74	.81	.3519	.3928
75	.80	.3352	.3743
76	.79	.3181	.3559
77	.78	.3009	.3377
78	.76	.2838	.3198
79	.74	.2671	.3023
80	.72	.2509	.2855
81	.71	.2353	.2693
82	.70	.2203	.2538
83	.69	.2057	.2387
84	.68	.1916	.2242
85	.67	.1783	.2104
86	.66	.1657	.1973
87	.65	.1537	.1849
88	.64	.1423	.1730
89	.62	.1315	.1616
90	.60	.1212	.1509
91	.58	.1116	.1407
92	.56	.1025	.1310
93	.54	.0939	.1218
94	.52	.0858	.1132
95	.50	.0781	.1050
96	.49	.0710	.0972
97	.48	.0642	.0898
98	.47	.0578	.0828
99	.45	.0517	.0762
100 or over	.43	.0458	.0698

APPENDIX SCHEDULE 1, Capital Acquisitions Tax Consolidation Act, 2003 - VALUATION OF LIMITED INTERESTS

PART 3 TABLE B

Column 2 shows the value of an interest in a capital of €1 for the number of years shown in column 1

1	2	1	2	1	2	1	2
No. of years	Value	No. of years	Value	No. of years	Value	No. of years	Value
1	.0654	14	.6116	27	.8375	40	.9360
2	.1265	15	.6369	28	.8480	41	.9425
3	.1836	16	.6605	29	.8578	42	.9490
4	.2370	17	.6826	30	.8669	43	.9555
5	.2869	18	.7032	31	.8754	44	.9620
6	.3335	19	.7225	32	.8834	45	.9685
7	.3770	20	.7405	33	.8908	46	.9750
8	.4177	21	.7574	34	.8978	47	.9815
9	.4557	22	.7731	35	.9043	48	.9880
10	.4913	23	.7878	36	.9100	49	.9945
11	.5245	24	.8015	37	.9165	50 & over	1.0000
12	.5555	25	.8144	38	.9230		
13	.5845	26	.8263	39	.9295		

Appendix 8 Particular Types of Benefit - Notes and Examples

Difficulties can arise in determining the market value of certain types of benefits. The following notes and examples illustrate how to deal with these.

1. A benefit which consists of a Right, Annuity or other Periodic Payment.

Legislation - Section 5 (2(a) & 2(b)), Capital Acquisitions Tax Consolidation Act, 2003.

Entitlement to a right (e.g. a right of residence, support or maintenance), an annuity or other periodic payment constitutes a benefit. This benefit must be capitalised in order to ascertain the market value to be included in Part 5 of the return. There are two ways of calculating the market value of the benefit, depending on whether the benefit is charged on property or not.

However, before we consider how the taxable value of such a benefit is calculated it is important that we understand the difference between a right to reside in property and having a life interest in property. A right to reside is a right to live in property only. This right is usually a charge on property. A life interest in property means that the person with the life interest effectively owns the property for his or her life. **An exclusive right to reside in a dwelling-house, is equivalent to having a life interest.**

Benefit charged on property

The following formula should be used to calculate the market value of a benefit charged on property e.g. a right of residence

$$\frac{\text{Annual Value of Right}}{\text{Annual Value of Property}} \times \text{Market Value of Property upon which the right is charged}$$

Example

On the death of John Ryan, his nephew Tom inherited the deceased's house. It was provided in the deceased's will that his sister Mary (aged 60), be entitled to a right of residence in the house for her life.

Market value of house is	€200,000
Annual value of right of residence is	€ 2,000
Annual value* of the house is	€ 20,000

Market value of benefit taken by Mary:

$$\frac{€\ 2{,}000}{€20{,}000} \times €200{,}000 = €20{,}000$$

**The rent which would be obtained if the property was let on the open market.*

The value of the benefit taken by Mary is €20,000 and this is the figure that is entered at Part 5, Panel C of the return for Mary.

However as Mary only has this benefit for her life, in order to calculate the taxable value of her benefit, the market value is multiplied by her age factor (see appendix 7) at Page 3, Part 7, Column B, item B6 i.e. €20,000 X 0.6475 = €12,950.

It should be noted, that when the return for Tom is being completed, the benefit taken by Mary can be deducted as a liability at Part 6, Panel A. **Note that it is the market value of the benefit i.e. €20,000 and not the taxable value of the benefit i.e. €12,950 that is deductible.**

In practice, Revenue will allow a deduction of one-tenth of the market value of the dwelling-house where there is a right of residence and a deduction of one-fifth of the market value of the property where there is a right of residence, support and maintenance. Note however that whatever method is used for calculating the deduction for the rights, the same method must be used for calculating the value of the cessor of these rights (see 2 below).

Note that a benefit of rights charged on property may qualify for agricultural or business relief and in that event the capitalised value of the right should be entered in Part 5, Panel A or B, as appropriate.

2. Benefit by Reason of the Cessor of Reserved Rights

When rights come to an end, e.g. when a person, having a right of residence, support and maintenance, dies then the original beneficiary i.e. the person who took the property subject to the rights, takes an inheritance of the cessor of those rights from the original disponer. Remember, that the original beneficiary will already have been allowed a deduction for these rights.

In order to calculate the market value of this benefit, we again use the formula;

$$\frac{\text{Annual Value of Rights}}{\text{Annual Value of Property}} \times \text{Market Value of Property on which the rights are charged}$$

Note that the values used are as at the date the rights ceased to exist.

Example

The facts are as in the previous example. Mary dies and on her death Tom takes an inheritance of the value of the cessor of the rights of Mary from the original disponer, John Ryan. The values at the date of death of Mary are as follows:

Market value of house	€300,000
Annual value of right of residence	€ 3,000
Annual value of house	€ 30,000

Market value of the benefit taken by Tom is:

$$\frac{€3{,}000}{€30{,}000} \times €300{,}000 = €30{,}000$$

The value of the benefit taken by Tom, on the death of Mary, is €30,000 and this figure is inserted at Part 5, Panel C in the return for Tom (a further return is required showing the date of inheritance and valuation date as the date of death of Mary). Under the rules of aggregation, the benefit of €30,000 may aggregate with the earlier benefit taken from John on his death and for which a return will have been delivered previously. Note that if the method used for calculating the deduction for Mary's right of residence originally was to take one-tenth of the market value of the dwelling-house, the same method must be used in valuing the cessor of those rights, i.e. one-tenth the market value of the dwelling-house.

3. Benefit not charged on property

A benefit which consists of the payment of an annuity which is not charged on property is another example of a benefit which must be capitalised to arrive at the figure to be included in Part 5 of the Inheritance/Gift Tax Return.

In this case, the capitalised value of the annuity is deemed to consist of such sum as would yield an annual income equivalent to the annual value of the annuity, were that sum to be invested at the date of inheritance in certain Government Stock. The relevant Government Stock is that stock which was last issued before the date of the benefit and which is redeemable not less than 10 years after the date of issue. A list of all stocks may be obtained from the National Treasury Management Agency - Tel. No. 01/6762266 or is available on the NTMA website at http://www.ntma.ie/GovtBonds/GovtBonds_bondOutstandingDetail.htm.

The appropriate stock applicable to the benefit should then be selected from the list. The price of the relevant stock at the valuation date can be obtained from the Irish Stock Exchange or the national newspapers.

Example

Under a deed of covenant, David Murphy provided for a payment of €3,600 per annum to his sister Aileen for seven years. The annuity was not charged on any property.

The market value of this annuity is calculated as follows:

Annuity	€3,600
Yield of relevant Government Stock, say	14.5%
Price per stock unit on valuation date, say	€ 0.84

Formula $\frac{\text{Annuity}}{\text{Stock Yield}} \times \text{Price per stock unit}$

Step 1

$$\frac{€3{,}600}{14.5} \times 100 = €24{,}828 \text{ of Government Stock}$$

Step 2
To purchase €24,828 of stock at €0.84 per unit would cost €24,828 X 0.84 = €20,855.52

Capitalised Value of Annuity = €20,855.52. This figure should be inserted at Part 5, Panel C of the return for Aileen.

Note that when calculating the taxable value of the benefit, Aileen only has it for seven years.

Taxable Value €20,855.52 X 0.3770 = €7,862.53

The value of the **cessor of the rights** (if relevant) i.e. capitalised annuity would be calculated in the same way, using the percentage yield of the latest issue of Government Stock and the quoted price of that stock at the date of cessation.

4. Free Use of Property

Legislation - Section 40, Capital Acquisitions Tax Consolidation Act, 2003.

A charge to tax arises where a person has the use and enjoyment of property either for no consideration or for less than full consideration. If, the "free" use is on-going, the benefit is deemed to be taken on 31 December each year. The following examples explain how the benefit is calculated.

Example 1

Market Value of Benefit in "free" use case involving a loan

Joe gives an interest free loan of €100,000 to his nephew John on 1 January. The commercial rate of interest is say 12%. John is deemed to take a gift of €12,000 on 31 December.

He is also deemed to take a gift each year, on 31 December, until the loan is repaid and each such deemed gift is taken into account for aggregation purposes. If the loan is repaid during the year, the date of the deemed gift for that year is the date of repayment. If the loan was repaid after six months the value of the gift for that year would be €6,000.

Example 2

Market Value of Benefit in "free" use case involving accommodation

Anne gives the use of her house worth €200,000 to her cousin Colette. The annual market rent is €15,000. Colette pays Anne €5,000 per annum. Colette is deemed to take a gift of €10,000 on 31 December each year that she has the use of the house and each deemed gift is taken into account for aggregation purposes.

5. Power of Revocation

Legislation - Section 39, Capital Acquisitions Tax Consolidation Act, 2003.

If a disponer, under a disposition, has retained to himself the power to revoke a disposition, then no tax is charged at the date of the disposition on the basis that ownership is deemed to remain with the disponer. Tax will only become payable when the power to revoke is released or when the disponer dies without revoking the disposition. In the event that the disponer dies without revoking the disposition, the benefit taken will be an inheritance as it is taken on a death, i.e. the death of the disponer.

If, as is usually the case, the beneficiary has the free use of the property during the period between the date of the original disposition and the date of death of the disponer, a charge to tax arises on the annual value of the property i.e. annual letting value, on the free use basis as described at 4 above.

Example

By deed of transfer dated 1 January, 2000, Owen transfers his house in Dublin to Declan but reserves to himself a power to revoke the transfer. Owen died on 30 June, 2003 without having exercised the power of revocation. At the date of Owen's death, the house is valued at €500,000. The value of the market rent from January, 2000 to December, 2003 is €20,000 per annum.

Declan is deemed to take the following benefits:

On 31 December, 2000	Gift	€ 20,000
On 31 December, 2001	Inheritance*	€ 20,000
On 31 December, 2002	Inheritance*	€ 20,000
On 30 June, 2003 (6 months "free" use of house)	Inheritance*	€ 10,000
On 30 June, 2003 (house)	Inheritance	€500,000

* Gifts that became inheritances because disponer died within two years. The small gift exemption still applies.

6. Contingencies

Legislation - Section 29, Capital Acquisitions Tax Consolidation Act, 2003.

Where a benefit is taken by a beneficiary and the entitlement is to cease upon the happening of a contingency, tax is payable on the full value of the property disregarding the contingency. Should the contingency occur, an adjustment will be made on the basis that the beneficiary took the benefit for a period certain and the taxable value of the interest will be calculated in accordance with Rule 6, Schedule 1 of the Act (**see Appendix 7, Page 62**).

Example

John dies on 1 October, 2002. Under his will, he left his house to his eldest grand-child, Stephen, on condition that he lives there. In default, the house was to go to his other grand-child, Joseph. Assume that Stephen does not qualify for Dwelling-house Relief.

The tax liability of Stephen is calculated on the basis that he took an absolute interest in the house (contingency is ignored). Five years after his Grand-father's death, Stephen emigrates. His tax liability is re-assessed on the basis that he had an interest in the house for a period certain of five years.

Original taxable value of Stephen's interest in the house	€200,000
Tax liability	€ 31,557

An adjustment of Stephen's tax liability is made when he emigrates. The tax is calculated as follows:

House valued €200,000 X 0.2869 (factor 5 years certain) =	€ 57,380
Tax liability	€ 3,033

Stephen will get a refund of tax i.e. €31,557 less €3,033 = €28,524 together with interest thereon.

Note that a further claim for Inheritance Tax arises on the resultant benefit taken by Joseph, from his grand-father, at the date Stephen emigrates.

Liability Subject to a Contingency

Legislation - Section 28(5)(a), Capital Acquisitions Tax Consolidation Act, 2003.

A deduction is not allowable in respect of any liability the payment of which is contingent on the happening of some future event. If and when the event occurs, a re-assessment of the tax is made.

Example

Mary dies and leaves her dwelling-house (value €200,000) to her brother Pat subject to Pat paying €20,000 to his daughter Lisa if and when she reaches the age of 25 years. Lisa is now aged 18 years.

Pat is taxed on the basis that he took a benefit of €200,000 without allowing the deduction of €20,000 payable to Lisa if she reaches 25 years. If Lisa dies before she reaches 25 years, Pat will not have to pay the €20,000.

If and when Lisa reaches 25 years, Pat's tax liability will be re-assessed on the based that the taxable value of his benefit is €180,000 i.e. €200,000 less €20,000.

However, in addition Pat will be treated as having the benefit of €20,000 for seven years. This is calculated on the basis of €20,000 X 0.3770 (factor for 7 years certain) = €7,540.

Therefore the taxable value of Pat's inheritance is €187,540 i.e. €180,000 plus €7,540.

Pat will receive a refund of any tax overpaid together with interest thereon.

7. Tax "Free" Benefits

Legislation - Section 87, Capital Acquisitions Tax Consolidation Act, 2003.

Where a benefit is taken free of tax, the benefit taken is deemed to include the amount of tax chargeable on the benefit. Where all or part of the tax is being paid by the disponer, that tax is deemed to be a further benefit for the purpose of calculating the final tax liability. If a beneficiary receives a tax free benefit under a will, the tax is normally payable out of the residue of the estate and this tax is a further benefit taken by the beneficiary. The tax on the tax free benefit under a will and on a benefit where the disponer is paying the tax is calculated in the same way.

Example

In November, 2002 Owen takes a legacy of €100,000, tax free, from his cousin (Group C).

	Tax Liability Pre Tax Free Benefit	Tax Liability Incl. Tax Free Benefit
1. Group Threshold	€ 21,108.00	€ 21,108.00
2. Taxable Value Prior Benefits	Nil	Nil
3. Unused Portion of Threshold	€ 21,108.00	€ 21,108.00
4. Taxable Value all Current Benefit within same Group Threshold	€ 100,000.00	€ 115,778.40
5. Taxable Excess	€ 78,892.00	€ 94,670.40
6. Tax on all Current Benefits (tax at 20%)	* € 15,778.40	€ 18,934.08

* This tax liability, which is payable out of the residue of the estate, is an additional benefit taken by Owen from his cousin. Therefore, the taxable value of the inheritance is €115,778.40 i.e. €100,000 plus €15,778.40.

8. Disposition enlarging the value of property

Legislation - Section 38, Capital Acquisitions Tax Consolidation Act, 2003.

Where a beneficiary receives property from a disponer and subsequently receives other property from the same disponer and the two properties together are of greater value than if owned separately, the second gift or inheritance is regarded as two separate benefits, i.e. (a) the value of the second property and (b) the increase in value of the first property as a result of the beneficiary also owning the second property.

Example

Sean is the owner of the entire issued share capital of a private company ABC Ltd. (amounting to €10,000 €1 shares). In October, 2001 he gifts 1,000 shares to his partner Susan.

The value of these shares is €1 per share. In September, 2002 Sean dies and leaves 5,000 more shares to Susan. Susan is now a majority shareholder in the company and the value of a majority shareholding is €4 per share.

The following benefits are deemed to be taken by Susan:

First benefit - gift in October, 2001 of 1,000 shares valued €1 each = €1,000

Second benefit - inheritance in September, 2002 of 5,000 shares valued €4 each = €20,000 plus increase in value of first benefit of 1,000 shares X €3 = €3,000. Therefore the value of the second benefit is €23,000.

Note that even if a beneficiary has disposed of the first property, for less than full consideration or to a company in which he was deemed to have control, within five years of receiving the second property, the enlargement in the value of the property will still apply.

9. Interest in Assurance Policies

Legislation - Section 41, Capital Acquisitions Tax Consolidation Act, 2003.

An interest in a policy of life assurance is deemed to become an interest in possession when and only when, either -

- the policy matures;
- policy is surrendered by the beneficiary to the insurer for a consideration in money or monies worth prior to maturing;
- the insurer makes a payment to the beneficiary in full or partial discharge of the policy.

The proceeds of the policy will only become taxable when it is an interest in possession.

Example 1

Martin has a life assurance policy on his own life. He has paid all of the premiums. He assigns the policy worth €500,000 to his daughter Kylie in 1996. Martin dies in 2002 and the policy matures by virtue of Martin's death.

A charge to Inheritance Tax will only arise on Kylie when she took an interest in possession of the policy on Martin's death in 2002 and not when the policy was assigned in 1996.

Example 2

If in Example 1 Kylie paid the premiums after the policy was assigned to her in 1996, she would have paid partial consideration and the value of the benefit taken by her would be calculated proportionately, e.g. if she paid 50% of the total premiums herself the benefit taken by her from Martin would be only €250,000.

10. Dispositions by or to a Company

Legislation - Section 43, Capital Acquisitions Tax Consolidation Act, 2003.

This section applies only to private companies as defined in section 27 of the Act.

For the purpose of assessing a liability to CAT, you must look through a company who has made or received a gift/inheritance to ascertain who are the shareholders of that company and those individuals will be treated as having given or received a benefit and that benefit will be the same proportion as the proportion they would receive if the company were wound up voluntarily on the date of the benefit.

Example

ABC Ltd. a private non-trading company gives a gift of €100,000 to Michael Barry.

The shareholders in ABC Ltd. are as follows:

John Barry (father of Michael)	50%
Mary Barry (mother of Michael)	10%
Peter Barry (brother of Michael)	40%

Michael is deemed to take the following gifts:

From John	€50,000
From Mary	€10,000
From Peter	€40,000

Appendix 9 Credits - Notes and Examples

1. Double Taxation

Background

Provisions relating to the relief of double taxation aim to mitigate the hardship which might arise when an event gives rise to both a charge to Capital Acquisitions Tax in Ireland and tax of a similar nature in another country. Double taxation can arise where one country imposes tax on worldwide assets, by reference to the domicile/residence of the disponer and another country imposes tax because property is situated in it's jurisdiction. It can also arise where both countries impose tax by reference to the domicile/residence of the disponer. Accordingly, Ireland, either unilaterally or on a bilateral basis, will make allowance for foreign tax paid on foreign property, subject to certain conditions. There are two Treaties in operation, one with the United Kingdom and one with the United States of America. What follows is a brief outline of the general principles of unilateral relief and relief under the two conventions.

(a) Unilateral relief

Unilateral relief is granted only where there is no double taxation treaty in force. It is granted where a gift or an inheritance of foreign property to or from an Irish resident or ordinarily resident disponer or beneficiary is reduced by the payment of a foreign tax which is similar in nature to estate duty, gift tax or inheritance tax. The relief applies only in respect of tax imposed by a foreign country on property situated in that foreign country. The credit, however, cannot be greater than the Irish tax on the foreign property and can only be given where the same event (i.e. gift or death) gives rise to tax in both countries.

The credit granted is the lesser of -

- the amount of gift/inheritance tax (CAT) payable on the foreign property

Or

- the amount of foreign tax on the foreign property

Example 1

An Irish resident/ordinarily resident disponer makes a gift of a house, located in a foreign country, and valued at €200,000. Ireland claims Gift Tax because of the disponer's residence and the foreign country claims tax because the house is located there.

Irish Tax	€10,000
Foreign Tax	€ 5,000
Ireland allows credit	€ 5,000
Net Irish Tax	€ 5,000

Example 2

Same facts as in example 1 except that the foreign tax payable is €15,000.

Irish Tax	€10,000
Foreign Tax	€15,000
Ireland allows credit	€10,000
Net Irish Tax	Nil

If the benefit contains both Irish and foreign property, the credit for foreign tax applies against the tax applicable to the foreign property only.

Example 3

John dies in September, 2002, domiciled and resident in Ireland. In his will he left all of his property to his sister Carmel.

The estate consisted of a bank a/c in Ireland valued at €100,000 and a house in Spain valued at €100,000.

Carmel's CAT liability is €31,557. Spanish tax is €15,000

The credit for the Spanish tax is applied against the Irish tax referable to the house only as follows;

*Net value of house €100,000 x €31,557 (Irish tax) = €15,778.50 (Irish tax on house)

*Net value of benefit €200,000

*In calculating the effective rate of CAT applicable to the house in Spain use net values, i.e. taxable values.

Therefore the credit is applied as follows:

Tax liability	€31,557
Less credit	€15,000 (lesser of Irish and Spanish tax applicable to house)
CAT payable	€16,557

If the Irish tax referable to the house only was less than €15,000, only part of the foreign tax would be given as credit, e.g. if the Irish tax was €10,000 the credit for foreign tax would be limited to €10,000.

(b) Bilateral relief

(1) Convention with the UK

This Convention covers Capital Acquisition Tax in Ireland and Inheritance Tax (formerly capital transfer tax) in the UK. The Convention determines taxing rights based on the domicile of the disponer. However the Treaty recognises the right of each country to levy tax according to its own law. The Capital Acquisitions Tax charge is based on the residence/ordinary residence of either the disponer or beneficiary while the U.K. charge is based on the domicile of the disponer. The Convention ensures that the country where the property is not situated gives a credit for tax paid in the country where the property is situated. This usually results in the country where the disponer is domiciled giving the credit for the tax paid in the other country, on property situated in that other country. Credit is given only when the same property is taxed, in both countries, on the same event. As in the case of unilateral relief, the amount of the credit cannot be greater than the Irish tax on the foreign property.

Double Domicile

It is usually the country claiming domicile which gives a credit for foreign tax. In view of the shared common law concept of domicile between Ireland and the U.K. this area does not usually cause difficulties. The U.K. has however the concept of a statutory or deemed domicile. The result is that, in some cases, both jurisdictions may claim to be the disponer's place of domicile. When this occurs Ireland gives credit for UK tax on UK property and the UK gives credit for Irish tax on Irish property, subject again to the proviso about the amount of the credit being restricted as is mentioned above. However, in the event that there is property which is situated in a third country, the credit is given by the country which has "subsidiary taxing rights"(**see page 79**).

Further information in relation to the "subsidiary taxing rights" rules are set out in Article 5(2) of the Convention or can be had by contacting the Taxpayer Information Service.

Points to Note

- It should be noted that the UK tax is not deductible as a liability in calculating the amount of CAT payable - it can be used only as a credit against CAT.
- A credit is given only for U.K. tax - no allowance is made for interest or penalty charges.
- Credit is given only when the same property is taxed on the same event in both jurisdictions.
- The credit given is limited to the tax on the benefit at the lower of the U.K. and Irish effective rates. In effect this means that the credit given for U.K. tax cannot be greater than the Irish tax on the same property.
- Any claim for credit (or for a related refund of tax) must be made within **six years** from the date of the event in respect of which the claim is made.

Who gets the credit?

The credit is given to the person liable to the UK tax who is normally the residuary legatee, i.e. the person who takes the remainder of the estate after all bequests have been distributed and debts and administration costs discharged, who must of course be liable to CAT. Tax on pecuniary legacies, i.e. cash legacies in the U.K. is borne by the residuary legatee. Accordingly, when the amount of the credit to be given in respect of the pecuniary legacy has been calculated, such amount will be offset against the Irish tax, if any, payable by the residuary legatee. This is in addition to a credit for the U.K. tax referable to the residuary legatee's own benefit (see examples 1 and 2). In the event that the residuary legatee pays no Irish tax no credit is given.

Specific Bequest

There is one circumstance where credit for U.K. tax is not allowed against the liability of the residuary legatee. Where a specific bequest of foreign property is made to a beneficiary, that benefit bears its own share of the foreign tax. Therefore, where there is also an Irish CAT charge on the benefit, the credit for U.K. tax is applied against that beneficiary's Irish tax.

Valuation used to calculate credits

As a tax on an estate, U.K. inheritance tax is charged on the valuation of the assets at date of death. As a tax on a benefit, Capital Acquisitions Tax is charged on the valuation of the assets at the valuation date. The valuation date for a benefit can be other than the date of death. As a result of these discrepancies the credit given is, to an extent, a notional credit as it does not always correspond precisely with the U.K. inheritance tax paid. In practice, therefore, both date of death valuations and valuation date valuations are used in calculating the credit for U.K. tax. As the U.K. tax is based on date of death valuations these valuations are used in calculations concerning the U.K. property.

How to Claim Credit

Ideally a self-assessment return should not be lodged until details of any credit for foreign tax to be given are known. However, it may not be possible in some cases to ascertain the information from the U.K. authorities prior to the valuation date and in that event an estimated amount should be included in the return. The tax can then be adjusted, if necessary, when final figures are available.

To claim the credit, a certificate from the relevant tax authority should be obtained certifying the following:

1. The total U.K. inheritance tax attributable to the property in question (exclusive of interest);
2. The property and its value upon which that tax was charged;
3. The date of payment of that tax;
4. That the tax was computed in accordance with the Convention;
5. That the tax is final;
6. That no application for a refund of U.K. inheritance tax is now pending or authorised and that, if hereafter, a refund is made, due notice will be given to the Capital Taxes Division, Capital Acquisitions Tax Customer Service Branch.

This certificate should be retained for **six years** as in the event of the case being selected for audit, the Commissioners will require sight of it.

The addresses of the relevant authorities in the U.K. are;

England and Wales: The Capital Taxes Office,
Ferrers House,
Castle Meadow Road,
Nottingham NG2 IBB.

Scotland: The Capital Taxes Office,
Mulberry House,
16, Picardy Place,
Edinburgh,
EH1 3NB.

Northern Ireland: The Capital Taxes Office,
Level 3,
Dorchester House,
52-58 Great Victoria Street,
Belfast,
BT2 7QL.

Calculation of the Credit

Example 1

(a) A disponer dies domiciled and resident in Ireland on 1 October, 2002 leaving an estate worth €200,000 - €120,000 in Irish assets and €80,000 in U.K. assets.

(b) By his will he gives €50,000 to A and the residue to B.

(c) U.K. tax is (say) €6,000.
Irish tax on A's benefit is (say) €8,000 and B's benefit €10,000.

Step 1 Calculate the proportion of each inheritance which is payable out of U.K. property according to the formula:

$$\text{Inheritance} \times \frac{\text{Gross U.K.}}{\text{Gross U.K \& Irish Estate}}$$

Inheritance A	€50,000	X	$\frac{€80,000}{€200,000}$	= €20,000
Inheritance B	€150,000	X	$\frac{€80,000}{€200,000}$	= €60,000

Step 2 Calculate the proportion of U.K. tax referable to each inheritance according to the formula:

$$\frac{\text{U.K. property in inheritance}}{\text{Total U.K. Property}} \times \text{U.K. tax}$$

Inheritance A	$\frac{€20,000}{€80,000}$	X	€6,000	= €1,500
Inheritance B	$\frac{€60,000}{€80,000}$	X	€6,000	= €4,500

Step 3: Calculate the rate of U.K. tax according to the formula:

$$\frac{\text{U.K. tax referable to inheritance}}{\text{U.K. property in inheritance}} \times 100$$

Inheritance A	$\frac{€1,500}{€20,000}$	X	100	= 7.5%
Inheritance B	$\frac{€4,500}{€60,000}$	X	100	= 7.5%

Step 4: Calculate the rate of Irish Tax on each inheritance according to the formula:

Irish Tax on inheritance / Inheritance		X	100	
Inheritance A	€8,000 / €50,000	X	100	= 16%
Inheritance B	€10,000 / €150,000	X	100	= 6.7%

Step 5: Calculate the credit to be given for the U.K. tax according to the formula:

U.K. property in inheritance X lower of Irish & U.K. tax rate

Inheritance A €20,000 x 7.5% (U.K. rate) = €1,500

Inheritance B €60,000 x 6.7% (Irish rate) = €4,020

Step 6: Determine to whom the credit is to be given.

Step 7: Calculate the net Irish Tax payable by each beneficiary.

	Irish Tax	U.K Tax	Credit	Net Irish Tax
Inheritance A	€8,000	€1,500	Nil	€8,000
Inheritance B	€10,000	€4,020	€5,520	€4,480

The U.K. tax on the cash legacy was borne by the residuary legatee B and therefore he gets the credit for the tax on the legacy taken by A as well as the tax on his own inheritance of the residue.

Points to Note

- U.K. tax is calculated at date of death values. CAT is calculated on valuation date values. Therefore the credit given may not correspond exactly with U.K. tax actually paid.
- Where the valuation date for CAT is not the date of death, use date of death valuations when calculating:
  (i) the proportion of U.K. property in a benefit;
  (ii) the U.K. tax referable to that property;
  (iii) the effective rate of U.K. tax;
- use relevant exchange rates in converting sterling to Euro i.e. date of death, valuation date and date of payment of U.K. tax as appropriate.

Example 1

		Step 1	Step 2	Step 3		Step 4	Step 5	Step 6	Step 7
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Beneficiary (whether or not chargeable to C.A.T.)	**Value of Benefit**	**Value of U.K. Property in (b)** €80,000* x (b) / €200,000 **	**Amount of U.K. Tax on (c)** €6,000 x (c) / €80,000	**Effective rate of U.K. Tax** (d) x 100 / (c)	**Amount of C.A.T. on (b)**	**Effective rate of C.A.T.** (f) x 100 / (b)	**Credit** Col. (c) x lessor of Cols. (e) or (g)	**Beneficiary to whom credit is given**	**Net C.A.T. Payable**
A	€50,000	€20,000	€1,500	7.5%	€8,000	16%	€1,500	B	€8,000
B	€150,000	€60,000 / €80,000	€4,500 / €6,000	7.5%	€10,000	6.7%	€4,020	B	€4,480***

* Euro equivalent of gross U.K. assets at date of death

** Euro equivalent of gross estate at date of death

*** €10,000 less €5,520 i.e. €1,500 + €4,020 (B as residuary legatee gets the credit for U.K. tax on the legacy of €50,000 taken by A)

Example 2

A disponer dies on 1 September, 2002, domiciled and resident in Ireland. He leaves an estate valued at:

Stg £250,000 in U.K .assets and €450,000 in Irish assets. His unsecured liabilities are €10,000.

By his will he leaves:

- €50,000 to his sister Agnes
- €60,000 in U.K. securities to his brother John
- €20,000 to his sister Susan
- Residue to his son Bill

Assume the following:

(a) U.K. inheritance tax amount to Stg.£50,000

(b) U.K. tax was paid on 1 December, 2002

(c) Agnes's CAT liability is €1,557

(d) John's CAT liability is €3,557

(e) Susan's inheritance does not give rise to a CAT charge

(f) The valuation date for CAT is 1 November, 2002

(g) On the valuation date the residue amounts to €726,665

(h) Bill's CAT liability is €60,770

(i) The exchange rate at both 1 September, 2002 and 1 December, 2002 is €1 = Stg £0.60. Therefore the U.K. assets were valued at €416,665 on 1 September, 2002 and the Euro equivalent of the U.K. tax paid on 1 December, 2002 was €83,333.

Notes on Completion of Form for Calculating Credit (I.T. 43)

(a) Enter the names of all beneficiaries whether or not they are chargeable to Capital Acquisitions Tax.

(b) (i) Enter the value of each benefit taken by each beneficiary listed in (a)

(ii) Where a benefit consists wholly or in part of U.K. property, convert it into Euro using the Euro/Sterling exchange rate at the valuation date.

(iii) Where either Irish or U.K. property has been specifically devised or bequeathed make a separate entry in (b) for each beneficiary of such property.

(c) **Step 1** (i) Divide the gross free U.K. estate by the gross free total estate.

- Use date of death values for all property.
- Convert Stg to Euro using the date of death exchange rate*
- Do not include any property specifically devised, bequeathed or subject to a settlement.

(ii) Multiply each figure in (b) by the factor at (i) above and enter in (c) but note (iii) and (iv) below.

(iii) Where U.K. property has been specifically devised or bequeathed enter in (c) the same figure as in (b) - do not multiply by the factor.

(iv) Where Irish property only has been specifically devised or bequeathed make no entry in (c) in respect of it.

(d) **Step 2** (i) Convert U.K. tax to Euro using the date of payment exchange rate*

(ii) Add the figures in column (c)

(iii) Divide (i) by (ii) above.

(iv) Multiply each figure in (c) by the factor at (iii) above and enter in (d)

(e) **Step 3** Divide each figure in (d) by the corresponding figure in (c) and multiply by 100.

(f) (i) Enter the amount of Capital Acquisitions Tax payable by each beneficiary.

(ii) Note the names of those beneficiaries, who have a liability to Capital Acquisitions Tax and U.K tax - only these are doubly taxed.

(g) **Step 4** Divide each figure in (f) by the corresponding figure in (b) and multiply by 100.

(h) **Step 5** For each beneficiary where a double tax charge arises (see (f)(ii) above) multiply the figure in (c) by the lower of the two corresponding rates in (e) and (g). Enter the resulting figure in (h).

(i) **Step 6** Enter the name of the person(s) to whom the credit is given. That person will be the residuary legatee(s) except where there is a specific devise or bequest of U.K. property - in that case the specific devisee or legatee gets the credit for U.K. tax.

(j) **Step 7** The Capital Acquisitions Tax payable by each beneficiary is calculated by deducting from the Capital Acquisitions Tax at (f) of each beneficiary the credit or credits at (h) to be given to that beneficiary (note the beneficiary to whom the credit is given at (i)). The result should be entered at (J).

* Exchange Rates are available from:

The Foreign Department
Central Bank
Dame St.
Dublin 2

Tel. 6716666

Form IT43

Example 2

		Step 1	Step 2	Step 3		Step 4	Step 5	Step 6	Step 7
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Beneficiary (whether or not chargeable to C.A.T.)	Value of Benefit	Value of U.K. Property in (b) €356,665* x (b) / €806,665 **	Amount of U.K. Tax on (c) €83,333 x (c) / €412,243	Effective rate of U.K. Tax (d) x 100 / (c)	Amount of C.A.T. on (b)	Effective rate of C.A.T. (f) x 100 / (b)	Credit Col. (c) x lessor of Cols. (e) or (g)	Beneficiary to whom credit is given	Net C.A.T. Payable
Agnes	€50,000	€22,107	€4,469	20%	€1,557	3.11%	€688	Bill	€1,557
John	€60,000	€60,000	€12,129	20%	€3,557	5.93%	€3,558	John	Nil
Susan	€20,000	€8,843	€1,787	20%	Nil	Nil	Nil	-	-
Bill	€726,665	€321,293	€64,948	20%	€60,770	8.37%	€26,892	Bill	€33,190***
		€421,243	€83,333						

* Euro equivalent of gross U.K. assets at death excluding specific bequest of U.K. Property i.e. €60,000.

** Euro equivalent of gross estate at death excluding specific bequest of U.K. Property i.e. €60,000.

*** I.e. €60,770 less €27,580 i.e. €688 + €26,892 (Bill as residuary legatee gets the credit for U.K. tax on the legacy of €50,000 taken by Agnes)

Dual domicile Ireland / UK & property situated in a third country liable to foreign tax

Where any property situated in a third country is liable to foreign tax, the country (either Ireland or UK) with **subsidiary taxing rights** grants a credit for the tax on that property situated in the third country.

The country with subsidiary taxing rights is the country which does not have fiscal domicile. Fiscal domicile is determined according to certain rules contained in Article 4 of the UK/Ireland Convention and the rules are:

- Disponer will be deemed to be domiciled in the contracting State in which he has, or had, at the material time a permanent home available to him;
- If he has, or had, a permanent home available to him in both countries, the domicile shall be deemed to be the contracting State with which his personal economic relations are at the material time closer. This concept of personal or economic relations is known as the centre of vital economic interests;
- If the contracting State in which the individual has or had his centre of vital economic interests cannot be determined, or if he has not, or had not, a permanent home available to him in either country, the domicile shall be deemed to be in the contracting State in which he has or had, at the material time, an habitual abode;
- If the habitual abode is in both or in neither contracting State then the domicile shall be deemed to be in that country of which he is, at the material time, a national;
- If he is or was a national of both States or of neither of them, the competent authorities of the contracting states will settle the question by mutual agreement.

The basis of the above answers will determine which country has Fiscal Domicile. The country which does not have fiscal domicile has subsidiary taxing rights for the purposes of third country credit and will give the double taxation credit. This does **not** change the rights of each country to tax the world-wide estate by virtue of its own laws.

Example 3

Patrick died on 1 December, 2002. At the date of death he was domiciled both in Ireland and the U.K. He was resident in Ireland. Under the rules of Article 4 of the Ireland/UK Double Taxation Convention, Patrick had a fiscal domicile in Ireland, as he had his permanent home in Ireland. Therefore the UK had subsidiary taxing rights as it was the country in which Patrick did not have fiscal domicile.

Patrick left property in Spain on which the following taxes were charged.

Spanish Tax	€ 800
Irish Tax	€1,200
U.K. Tax	€3,000

Ireland allows the tax payable in Spain against its tax unilaterally. The net tax payable in Ireland is

Irish Tax	€1,200
Spanish Tax	€ 800 (credit)
Net Irish Tax	€ 400

The U.K. (with subsidiary taxing rights) will allow the Spanish tax as a credit either unilaterally or under the terms of its treaty with Spain (if any) and will also allow the Irish tax on the Spanish property as a credit under the Ireland/UK Convention.

The net tax payable in the U.K .is

U.K. Tax	€3,000
Less Spanish Tax	€ 800 (credit)
Less net Irish Tax	€ 400 (credit)
Net U.K. Tax	€1,800

Total Tax will be

Spain	€ 800
Ireland	€ 400
U.K.	€1,800
Total	€3,000 (this represents the highest of the three charges).

(ii) Convention with the US

The Ireland - US Treaty, which was concluded in 1951, is treated now as applying to inheritance tax in Ireland and federal estate tax in the USA. It does not apply to gift tax or to any taxes in the nature of death duties which may be imposed by individual U.S. states e.g. Californian inheritance tax (however, in such cases unilateral relief may apply).

Ireland imposes inheritance tax on worldwide assets where the disponer or beneficiary is resident/ordinarily resident in Ireland, otherwise only assets situated in Ireland are liable to inheritance tax. The U.S. imposes federal estate tax on worldwide assets if the disponer was a US citizen or was domiciled in one of the States of the U.S., otherwise only property situated in the U.S. is liable to federal estate tax (subject to certain exceptions). However the Convention provides that Ireland cannot tax property outside its territory unless the disponer died domiciled in the State (or the disposition in question was governed by the law of the State) or else died not domiciled (i.e. not resident) in the U.S and this will continue to be the position irrespective of the residency rules. This means that a benefit taken by an Irish resident beneficiary of U.S. situate property from a disponer who is domiciled in the U.S. might appear to be subject to C.A.T. but is in fact not liable under the terms of the Convention. Where either country imposes tax on property situated solely in the other country then the country where the property is not situated gives credit for the tax paid in the other country. Like both unilateral and relief under the UK Double Taxation Treaty, the amount of the credit cannot exceed the amount of inheritance tax on the property which is doubly taxed. In circumstances where the convention does not provide relief, the unilateral provisions of section 107 of the Act may apply.

As the U.S. claims to tax assets wherever situated if the deceased is a U.S citizen at the time of his death, irrespective of the domicile, it often results in both Ireland and the U.S. claiming tax on worldwide assets. In such a case the Convention, if the deceased died domiciled and resident or ordinarily resident in Ireland but a citizen of the U.S. at the date of death, provides that Ireland will allow against its tax on property situated in the U.S. a credit for the U.S. tax payable on that property. The credit given is the lesser of the Irish or U.S. tax on that property. The U.S. on the other hand will allow against its tax on property situated in Ireland a credit - again equal to the lesser of the Ireland or U.S. taxes (**see example 3**).

The location of property is central to the whole question of the relief and it is here that the convention with the U.S. differs significantly from the convention with the U.K. It contains a code in Article III called the "Situs Code" which is to be applied where the deceased died domiciled in either Ireland or the U.S. (or in both). The code in Article III sets out eleven rules for determining the situs (location) of different classes of property. While it conforms substantially to general law with regard to most classes of property, it differs significantly with regard to the following classes:

- Debts due to the deceased (unless otherwise provided for). It is important to note that debts include bank accounts.
- Moneys payable under an assurance policy or an insurance policy on the life of the disponer.
- Government securities and shares or stock in municipal or government corporations.

These categories of property are deemed to be situated where the disponer was domiciled. This can result, exceptionally, in property being treated as located in both countries as both countries may claim domicile. When this happens, the credit is split. The credit to be given is based upon the lower of the taxes charged in both jurisdictions and each gives a proportion of that sum as a credit so that the amount of tax payable between the two countries is equal to the greater amount payable in the two countries separately (**see example 4**).

Note that the situs code is governed by the domicile of the disponer and not by his/her citizenship.

Under the provisions of Article VI any claim for credit (or for a related refund of tax) must be made within six years from the date of the disponer's death.

Ireland - U.S. Convention: Situs Code: Article III (2)

Class of Property	Situs for purposes of the Convention
Immovable Property	Place it is located
Tangible moveable property including currency, negotiable bill of exchange promissory notes	Place where located or if in transit, at the place of destination
Debts due to the deceased, secured or unsecured - includes bank accounts, mortgages, dividends, shares in Government or municipal corporations	Place of domicile
Shares or stock in a corporation except government or municipal	Place where or under the law of which the corporation was created
Policies of insurance and assurance	Place of domicile
Goodwill of business	Place where business carried on
Ships and aircraft and shares thereof	Place of registration
Patents, trademarks and designs	Place of registration
Copy right, franchises and rights of licences to use any copy-righted material, patent, trademark or design	Place where the rights are exercisable
Rights or causes of action ex delicto surviving for the benefit of an estate of a decedent	Place where such rights or causes of action arose
Judgment debt	Place where judgment is recorded

Example 1

Michael dies domiciled in New York and leaves the following assets:

	Asset	Situs	Country / State
■	Lands in Ireland	Place Located	Ireland
■	House in New York	Place Located	New York
■	Irish Bank Account	Place of Domicile	New York
■	Irish Government Stock	Place of Domicile	New York
■	U.S. Corporation Shares	Place where Corporation was created	New York
■	Insurance Policy	Place of Domicile	New York

Where the code does not specifically provide for the situs of any particular property in an estate the Convention provides that the situs is to be determined according to the law of the territory in which the deceased was not domiciled.

The operation of the situs code could result in property escaping taxation in both jurisdictions. The code contains a proviso to prevent this happening (see example 2).

Example 2

John dies domiciled in the State of New York leaving lands in Ireland and an Irish bank account to Tom who is resident in Ireland. Under the situs code Ireland can only tax the lands as the bank account is deemed to be located in New York. If the bank account is not large enough to attract tax in the U.S. it would therefore escape tax in both jurisdictions. However a proviso in Article III of the Convention provides that in that scenario, Ireland may impose tax.

Example 3

Patrick Jones dies domiciled in Ireland in December, 2002. He is a U.S. citizen at the time of his death. He leaves all his property to his two children. At his death his estate is as follows:

A house in Ireland	€ 120,000
Irish Bank Accounts	€ 90,000
Furniture and personal effects	€ 60,000
Shares in U.S. Corporations	€ 300,000
Irish Government Stock	€ 24,000
U.S. Government Stock	€ 6,000
Insurance policies in Ireland and the U.S.	€ 600,000
Total Estate	€ 1,200,000
Total Federal Estate Tax paid (Converted to as on the date of payment)	€ 150,000

Rate of Federal Estate Tax 12.5% i.e. $\frac{€\ 150,000}{€\ 1,200,000} \times 100$

Each beneficiary takes a benefit of	€ 600,000
Capital Acquisition Tax payable by each	€ 35,570

Rate of Capital Acquisitions Tax 5.9% i.e. $\frac{€35,570}{€600,000} \times 100$

Situs Article III (2) of Convention

Asset	**Situs**	**Country**
House	Place located	Ireland
Bank Accounts	Place of domicile	Ireland
Furniture and effects	Place located	Ireland
U.S. Corporation Shares	Place where Corporation was created	U.S.
Irish Government Stock	Place of domicile	Ireland
U.S. Government Stock	Place of domicile	Ireland
Insurance Policies	Place of domicile	Ireland

A credit is given against Capital Acquisitions Tax payable on property situated in the U.S. for Federal Estate Tax, (F.E.T.) payable on the same property, at the lower effective rate.

Ireland gives credit for F.E.T. payable on the U.S. Corporation shares as the only property situated in the U.S.A.

U.S. tax referable to U.S. Corporation shares $\frac{€300,000}{€1,200,000}$ x €150,000 = €37,500 = 12.5%

Irish Tax referable to U.S. Corporation shares $\frac{*€150,000}{*€600,000}$ x €35,570 = €8,892.50 = 5.9%

*** ½ share of U.S. Corporation shares and benefit taken by each beneficiary.**

As the Irish rate of tax is the lowest effective rate, credit is given against the tax liability of each beneficiary amounting to €150,000 x 5.9% = €8,850.

Total Capital Acquisitions Tax payable by each beneficiary is €35,570 less €8,850 = €26,720

Example 4

1. John Burke dies domiciled in both Ireland and New York and leaves a bank account in Ireland.

2. Under the situs code, the situs of the bank account is the place of domicile and therefore it is situated in both Ireland and New York as both jurisdictions are claiming domicile under their law.

3. Each country assesses tax on the bank account.
   - U.S. tax = € 600
   - Irish tax = € 400

   Total tax = €1,000

4. The credit given is the lesser of the two taxes i.e. €400 Irish tax)

5. Ireland gives a proportion of the credit according to the formula:

   $\frac{\text{Irish Tax}}{\text{Irish \& U.S. Tax}}$ x Total Credit = $\frac{€400}{€1,000}$ x €400 = €160

6. Net Irish Tax = €400 less €160 (credit) = €240

7. U.S. gives a proportion of the credit according to the formula:

   $\frac{\text{U.S. Tax}}{\text{U.S. \& Irish Tax}}$ x Total Credit = $\frac{€600}{€1,000}$ x €400 = €240

8. Net U.S. Tax = €600 less €240 (credit) = €360

9. Total tax payable in both jurisdictions after credits is €600 i.e. the greater of the two amounts chargeable in either jurisdiction.

In the event that there is property in a third country, the credit for the tax on such property should be apportioned in the same way.

Example 5

Pat Kelly dies domiciled and resident in Ireland on 1 September, 2002. He leaves an estate valued at $600,000 in U.S. assets and €200,000 in Irish assets. Unsecured liabilities amount to €20,000.

Under the terms of his will he left his house in New York to his nephew Tom, a legacy of €50,000 to his niece Helen, a legacy of €20,000 to his nephew Michael and the residue of the estate to his sister Mary.

Assets in estate

House in New York	$500,000
Bank a/c in New York	$ 50,000
U.S. Corporation Share	$ 50,000
Total	$600,000
Irish Bank a/c	€100,000
Irish Shares	€100,000
Total	€200,000

Assume the following:

- U.S. Federal Tax amounts to $68,750
- U.S. Federal Tax paid on 1 December, 2002
- Helen's Capital Acquisitions Tax liability is €1,557
- Tom's Capital Acquisitions Tax liability is €92,567
- Michael has no Capital Acquisitions Tax liability
- Valuation date for Capital Acquisitions Tax is 1 November, 2002
- Exchange rate for dollar to Euro at 1 September, 2002 is €1 = $0.9809, at 1 November, 2002 is €1 = $0.99 and at 1 December, 2002 is €1 = $1
- Value of residue at valuation date is €211,000
- Mary's Capital Acquisitions Tax liability is €33,757

Therefore the U.S. assets were valued at €611,683 at the date of death i.e. 1 September, 2002 and the euro equivalent of the Federal Estate Tax paid on 1 December, 2002 is €68,750.

Situs

Asset	**Situs**	**Country**
House	Place Located	U.S. A.
Bank a/c in New York	Place of Domicile	Ireland
U.S. Corporation Shares	Place where Corporation Created	U.S.A.
Irish Bank a/c	Place of Domicile	Ireland
Irish Shares	Where Corporation Created	Ireland

Example 5

		Step 1	Step 2	Step 3		Step 4	Step 5	Step 6	Step 7
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Beneficiary (whether or not chargeable to C.A.T.)	Value of Benefit	Value of U.S. Property in (b) 50,974* x (b) / 301,948 **	Amount of F.E.T. Tax on (c) 68,750 x (c) / 552,483	Effective rate of Federal Estate Tax (d) x 100 / (c)	Amount of C.A.T. on (b)	Effective rate of C.A.T. (f) x 100 / (b)	Credit Col. (c) x lessor of Cols. (e) or (g)	Beneficiary to whom credit is given	Net C.A.T. Payable
Tom (house)	€505,050	€ 505,050	€62,848	12.4439%	€92,567	18.32%	€62,848	Tom	€29,719
Helen	€ 50,000	€ 8,440	€ 1,050	12.4439%	€ 1,557	3.11%	€ 262	Mary	€ 1,557
Michael	€ 20,000	€ 3,376	€ 420	12.4439%	Nil	-	-	-	-
Mary (residue)	€211,000	€ 35,617	€ 4,432	12.4439%	€33,757	16%	€ 4,432	Mary	€29,063***
		€ 552,483	€68,750						

* Euro equivalent of gross U.S. assets at date of death, excluding specific bequest of house in New York (bank a/c in New York is regarded as an Irish asset under situs code).

** Euro equivalent of gross estate at date of death excluding specific bequest of the house in New York.

*** i.e. €33,757 less €4,694 i.e. €262 and €4,432 (Mary as residuary legatee gets the credit for the US tax on the legacy of €50,000 taken by Helen).

2. Capital Gains Tax

Where both Capital Gains Tax and Capital Acquisitions Tax are chargeable on the same asset, in connection with the same event, the Capital Gains Tax paid is allowed as a credit against the Capital Acquisitions Tax.

The credit however cannot exceed the amount of Capital Acquisitions Tax attributable to the same asset.

The circumstances where the credit can occur are as follows:

- on gifts of real or leasehold property, stocks and shares etc;
- on the death of a life tenant where a further life interest arises;
- on the appointment by discretionary trustees of property out of a discretionary trust whether the trust arose under a will or a settlement during the lifetime of the settlor;
- on the early break up of a trust.

Example

John gives a gift of shares and cash to Seamus.

Assume -

Total Gift Tax payable by Seamus	€900(€500 attributable to shares)
Capital Gains Tax payable by John	€600(only the shares are liable to CGT)

The credit to be allowed in respect of CGT cannot exceed the amount of CAT on the shares i.e. €500.

Therefore the credit for CGT is €500 and not €600 and this is the amount of credit that should be claimed.

The CAT payable will be €400.

Capital Gains Tax is not payable until October in the year following the year of disposal and therefore in most cases the allowable CGT will not have been discharged at the time the CAT return is being lodged. In such cases, a credit will be allowed for CGT payable but a certificate of discharge from CAT will not issue until the computation and payment of CGT has been verified.

Note that if Capital Gains Tax and Capital Acquisitions Tax arise on the same property but not the same event, the Capital Gains Tax may, in certain circumstances, be deductible as a liability in order to calculate the taxable value of the benefit.

Capital Gains Tax arising on the disposal of assets in the administration of an estate does not arise on the inheritance which is the event giving rise to Capital Acquisitions Tax. Therefore a credit for Capital Gains Tax is not given. The amount of Capital Gains Tax paid may be deducted as a liability in order to arrive at the taxable value of the inheritance.

3. Prior Capital Acquisitions Tax on same event

If Capital Acquisitions Tax is charged more than once on the same property on the same event, the tax which is earlier in priority is allowed as a credit against the tax which is later in priority (Section 105 of the Act refers).

The charging of tax more than once on the same property on the same event occurs when a settlement is broken up.

Normally in a settlement, the disponer gives property to a life tenant for his/her life and on the death of the life tenant the property passes to a third party (the remainderman). When a settlement is allowed run its course as originally envisaged by the disponer, the remainderman will only become liable to CAT when he becomes "entitled in possession" to the property on the death of the life tenant.

Circumstances giving rise to a double charge to CAT on the same property on the same event.

- Remainderman disposes of his future interest to a third party;
- Life Tenant releases life interest to the remainderman;
- Release by the remainderman of his future interest to the life tenant either

  (a) voluntarily, i.e. by gift

  or

  (b) involuntarily, i.e. on death
- Remainderman and life tenant divide the settlement property between them.

1. Remainderman disposes of his future interest to a third party.

The remainderman (i.e. the person who will become entitled to the property on the death of the person who has the life interest) disposes of his future interest in the property while the life tenant is still alive to a person other than the life tenant, i.e. to a third party (transferee).

The taxation consequences are as follows:

When the life tenant dies the third party will become entitled in possession to the property. On that date two charges to tax will arise.

First Charge
Tax will be chargeable as if the remainderman took the inheritance of property from the original disponer. However the person liable to pay the tax will be the third party (transferee), section 32 of the Act refers. The group threshold applying will be based on the relationship between the disponer and the remainderman.

However, it is only the transferee who can qualify for agricultural relief, i.e. the 80% and domicile test apply to him/her.

Second Charge
Tax is chargeable on the property passing from the remainderman to the third party (transferee).

Both charges to tax arise on the same property and on the same event i.e. the death of the life tenant. Therefore, the tax chargeable on the First Charge is offset as a credit against the tax chargeable on the Second Charge.

Example

John dies on 1 September, 2000 and leaves his entire estate valued €100,000 to his brother Joe (life tenant) for life and on the death of Joe the property is to pass to their cousin Mary (remainderman). Assume Joe has paid tax on the benefit taken by him from John in 2000.

During the life time of Joe, Mary dies and bequeaths the property to her sister Clare. No charge to CAT will arise until the property becomes an "interest in possession" on the death of the life tenant Joe.

Joe dies on 1 September, 2002 and on his death two charges to tax arise. There is no change in the value of the property.

First Charge
Inheritance taken by Mary from John. Tax liability €15,778.40. Clare as transferee is liable to pay the tax.

Second Charge
Inheritance taken by Clare from Mary. Tax liability €11,557.

As two charges to tax arise on the same property i.e. €100,000 and on the same event i.e. the death of the life tenant Joe, a credit of the tax on the first charge is given against the tax on the second charge i.e.

Second Charge Tax	€11,557.40
First Charge Tax	€15,778.40 (credit)
Tax payable on second benefit	Nil

The total tax payable by Clare is €15,778.40, i.e. the tax payable on the first charge.

2. Life Tenant releases life interest to remainderman.

When a life tenant releases his/her life interest to a remainderman, section 33 of the Act deems the life tenant to have died immediately prior to the release of the life interest.

On the date of the release two charges to tax arise.

First Charge
Inheritance Tax will be chargeable on the property passing from the original disponer to the remainderman on the deemed death of the life tenant.

Second Charge
Gift Tax will be chargeable on the gift of the unexpired life interest in the property from the life tenant to the remainderman.

As both charges to tax arise on the same property and same event i.e. the deemed death of the life tenant, the provisions of section 105 of the Act apply and therefore the tax on the first charge will be credited against the tax on the second charge.

In general the inheritance tax claim (being based on the full value of the property) would be far greater than the gift tax claim (being based on the life tenant's unexpired interest in the property) and would result in no gift tax being payable. In any event the total tax payable on both benefits will not be greater than the highest tax payable on any one benefit.

As the beneficiary takes two benefits on the same day, they would aggregate if they were both within the same group threshold. However, Section 103 of the Act provides that where both charges arise on the same property and same event, they are not aggregated with each other and neither are they both to be aggregated in respect of any future benefits taken by the remainderman. The effect of this is that if the remainderman receives future aggregable benefits the Revenue Commissioners will deem the prior benefit that gives rise to the most tax on the current benefit as the benefit that will be aggregated.

Example

Colm Murphy who died in 1996 left his dwelling-house to his brother Tom for life with remainder to their nephew Pat. In September, 2002 Tom (age 60) decides to live in a nursing home and by deed releases his life interest in the dwelling-house to Pat. The value of the property is €200,000.

Two charges to tax on the dwelling-house arise in September, 2002 on the deemed death of Tom.

First Charge
Inheritance taken by Pat from Colm. Tax liability €31,557

Second Charge
Gift taken by Pat from Tom.

Taxable Value is €200,000 x 0.5809 (factor Male aged 60)	=	€116,180.00
Less Small Gift allowance	=	€ 1,270.00
Taxable Value	=	€114,910.00
Tax Liability	=	€ 14,539.00

Although both benefits are within the Group B threshold they will not aggregate (Section 103 of the Act).

The tax on the First Charge is credited against the tax on the Second Charge (Section 105 of the Act).

Second Charge Tax	€14,539
First Charge Tax	€31,557 (credit)
Tax on Second Charge	Nil

The total tax payable by Pat is €31,557, i.e. the tax payable on the first charge.

3. Release by the remainderman of his future interest to the life tenant.

This release can be either voluntary (by gift) or involuntary (on death). On the date of the release of the future interest by the remainderman, the death of the life tenant is deemed to occur immediately before the release.

Again two charges to tax arise.

First Charge
Inheritance Tax will be chargeable on the property passing from the original disponer to the remainderman on the deemed death of the life tenant. The life tenant (transferee) is accountable for the tax.

Second Charge
The second charge is either gift tax or inheritance tax (depending on whether the release was voluntary or involuntary by the remainderman) on the property passing from the remainderman to the life tenant. Tax will be chargeable on the value of the entire property less the value of the life tenant's existing life interest. In effect tax will only be charged on the value of the remainder interest. However, the life tenant is not given an allowance for his existing life interest where he comes into possession of the remainder interest under a circumstance built into the terms of the original settlement, e.g. John to Mary for life with remainder to Mary if she marries but if not the remainder interest is to pass to Kathleen. If Mary marries she will take the remainder interest but in that circumstance she will not be allowed a deduction for her existing life interest in calculating the taxable value of her benefit.

As the two charges to tax arise on the same property and same event i.e. the release of the future interest by the remainderman, the tax on the first charge can be credited against the tax on the second charge.

Example

James who died in 1998 left his house to his wife Helen for life and on her death the house is to pass to his nephew Brendan. In October, 2002 Brendan is killed in a car accident and under the terms of his will his future interest in the house is left to Helen, the life tenant.

In October, 2002 the house is valued €200,000 and Helen is aged 50 years.

Two charges to tax arise.

First Charge
Helen, the life tenant, is deemed to have died immediately prior to Brendan.

Inheritance taken by Brendan from James. Tax liability €31,557.

Helen as transferee is accountable for this tax liability.

Second Charge
Inheritance taken by Helen from Brendan.

Value of property	€200,000.00
Less value of Helen's existing interest in the property i.e. €200,000 x 0.7791 =	€155,820.00
Taxable value of Helen's benefit	€ 44,180.00
Taxable liability	€ 4,614.40

The tax on the First Charge is credited against the tax on the Second Charge (Section 105 of the Act).

Second Charge Tax	€ 4,614.40
First Charge Tax	€31,557.00 (credit)
Tax on Second Charge	Nil

The total tax payable by Helen is €31,557 i.e. the tax payable on the first charge.

4. Remainderman and Life Tenant divide the settlement property between them.

Actuarial Division

If the remainderman and the life tenant divide the settlement fund between them on an actuarial basis i.e. according to the value of their respective interests, each of them is only getting property to which they are entitled under the settlement. In this circumstance, there would be only one charge to tax, i.e. from the original disponer to the remainderman, on the break up of the trust. The life tenant will already have been liable to tax on the acquisition of the life interest in the settlement property.

Example

John dies in 1998 and leaves property to his sister Mary for life and on her death the property is to pass to his nephew Pat.

Mary pays inheritance tax on the value of her life interest. On 1 December, 2002 Mary and Pat decide that they would like some disposable capital and decide to break up the trust by each of them taking the actuarial value of their interest in the trust. Assume that the trust fund is €100,000 and that the value of Mary's life interest is €20,000 and Pat's remainder interest is worth €80,000.

On the break up of the trust, the original charge to inheritance tax still stands, i.e. the inheritance of €100,000 by Pat from John (original disponer). The tax liability of Pat is €11,557. This tax is apportioned between Pat (€9,245.60) and Mary (€2,311.40) as Mary is the "transferee" in respect of the part of the trust fund acquired by her (section 32 of the Act refers).

Non Actuarial Division

This occurs if the life tenant and remainderman split the trust fund in a manner that results in one of the parties making a gift to the other. If, in the previous example, Mary and Pat had divided the trust fund of €100,000 equally between them and taken €50,000 each, Pat in effect makes a gift of €30,000 to Mary. Therefore, two charges to tax arise.

First Charge

Is on the inheritance taken by Pat (remainderman) of the trust fund of €100,000. Tax liability €11,557.

Second Charge

Is on the Gift of €30,000 taken by Mary from Pat i.e. €50,000 less €20,000 (the value of her existing life interest in the €100,000). Therefore tax is chargeable on €30,000.

Tax Liability €1,778.40 (Nephew to Aunt is Group C).

Credit tax on 1st charge i.e. €11,557 against tax on 2nd charge i.e. €1,778.40.

Therefore tax on 2nd charge is Nil.

The only tax payable is that on the first charge i.e. €11,557 and as in the previous example Pat will pay €9,245.60 and Mary will pay €2,311.40 as transferee.

Appendix 10 TAXATION OF FOREIGN PROPERTY TABLE

The following table shows the effects of the charge to Capital Acquisitions Tax where the gift or inheritance consists of foreign property:

	Residence or ordinary residence of disponer	Residence or ordinary residence of beneficiary	Domicile of disponer	Domicile of beneficiary	CAT liability
1	Irish	Irish	Irish	Irish	Liable
2	Irish	Irish	Foreign*	Irish	Liable
3	Irish	Irish	Irish	Foreign	Liable
4	Foreign	Irish	Foreign*	Irish	Liable
5	Irish	Foreign	Irish	Irish	Liable
6	Foreign	Foreign	Irish	Irish	Not Liable
7	Irish	Irish	Foreign	Foreign	Not Liable
8	Irish	Foreign	Irish	Foreign	Liable
9	Foreign	Foreign	Foreign	Irish	Not Liable
10	Foreign	Foreign	Foreign	Foreign	Not Liable
11	Irish	Foreign	Foreign	Foreign	Not Liable
12	Irish	Foreign	Foreign	Irish	Not Liable
13	Foreign	Irish	Irish	Irish	Liable
14	Foreign	Foreign	Irish	Foreign	Not Liable
15	Foreign	Irish	Foreign	Foreign	Not Liable
16	Foreign	Irish	Irish	Foreign	Not Liable

* Where a disponer dies domiciled in any of the states of the U.S.A., **no liability to inheritance tax** arises in respect of foreign situate property.

Appendix 11 Capital Acquisitions Tax Forms

Form Code	Form description
CA 3	Assessment for instalment cases.
CA 4	Questionnaire and statement of deceased's interests.
CA 6	Schedule of Lands and Buildings.
CA 11	Certificate of Discharge from Capital Acquisitions Tax.
CA 12	Certificate of Discharge relating to title based on possession, i.e. squatters rights.
CA 24	Inland Revenue Affidavit.
CA 26	Corrective Affidavit.
CA37A + B	Appeals to the Land Values Reference Committee.
CA 44	Personal Certificate of Discharge from CAT, e.g. for executor or agent.
CAT 10	Claim for dwelling-house exemption.
A3(C)	Application for grant de bonis non.
IT 8	Release of funds from financial institutions for joint accounts.
IT 10	Release of funds from financial institutions for sole accounts.
IT 38	Gift/Inheritance Tax Return form.
IT 40	Application for payment of CAT by transfer of Government stock.
IT 43	Form for calculating double taxation credit.
IT 69	Annual return for instalment cases.
IT 76	Self certification by solicitor of registration of title based on possession.
GT 15	Gift Tax return from disponer.
Q 7	Valuation of private company shares.
IT 4	Discretionary Trust Tax Return form for 6% charge.
IT 32	Discretionary Trust Tax return for 1% annual charge.
DT 1	Discretionary Trust Tax Return from disponer.