

CAT – the solicitor in practice

- ▶ Overview – territoriality, computation, thresholds
- ▶ Valuation date
- ▶ Recap on the main reliefs
- ▶ Sundry issues –Trusts, ARF inheritance, exemptions etc
- ▶ Dealing with Estates including tax clearance

CAT – History

- Before CAT: Wealth transfers were taxed mainly through Estate Duty / “**death duties**” (tax on the deceased’s estate as a whole), a system dating back to late-19th-century legislation.
- Early–mid 1970s reform agenda: Government aimed to modernise death duties, improve fairness, and close avoidance via lifetime gifting.
- **1976**: Capital Acquisitions Tax Act 1976 introduced CAT as a unified tax on gifts and inheritances, replacing Estate Duty with a beneficiary-based model.
- Anti-forestalling start dates:
 - Gifts taxable from 28 Feb 1974
 - Inheritances taxable from 1 Apr 1975
- 1980s: Discretionary Trust Tax added to prevent CAT avoidance through discretionary trusts.
- 1989: CAT moved to self-assessment.
- 1993–2001: Probate Tax introduced then abolished; CAT remained the principal wealth-transfer tax.
- 2003: Rules consolidated into CAT Consolidation Act 2003 (CATCA 2003); amended annually in Finance Acts.
- Today: Flat 33% rate above thresholds; receipts influenced heavily by asset/property values and threshold changes.

CAT – 0.79% of overall tax take

- Total Exchequer tax receipts (all tax heads), 2024: €108.0 billion.
- Total CAT receipts, 2024: €854 million.
- CAT as % of total receipts:
 - €0.854bn / €108.0bn \approx 0.79% (\approx 0.8% of the total tax take).
- Key drivers of CAT level in 2024 (1-line):
 - Property/asset inflation + thresholds not fully keeping pace → more estates and beneficiaries over CAT limits.

Scope

CAT applies where **any one** of the following is true:

1. The **disponer is resident or ordinarily resident in Ireland** for CAT purposes at the date of the gift/inheritance; or
2. The **beneficiary is resident or ordinarily resident in Ireland** for CAT purposes at the date of the gift/inheritance;
or
3. The **property is situated in Ireland**, regardless of where the disponer (the person giving) or the beneficiary (the person receiving) lives.

Except for:

- A non domiciled individual is not considered resident/ordinary resident unless he/she was resident in Ireland for 5 consecutive tax years preceding the date of the benefit and on that date was either resident or ordinary resident in tax year.

Double Tax Relief:

- Credit for UK inheritance tax paid
- Potential credit/exemption available under 1950 US/Ireland Convention
- Credit for other countries under unilateral relief

Initial steps

For Capital Acquisitions Tax you need to identify:

1. The residence & domicile of the donor;
2. The residence of the beneficiary;
3. Where the assets are located;
4. The beneficiary's relationship to the donor;
5. Prior benefits in the same group.

CAT Group thresholds

Depending on the relationship between the donor and the beneficiary one of the following group thresholds will apply from 02 October 2024

1. Group A - €400,000
2. Group B – €40,000
3. Group C - €20,000

Group A

- Child of the disponer, or a
- Minor child of a deceased child of the disponer (i.e. a benefit made from grandparent to grandchild, where the parent – being the grandparent's child – has died), or a
- Parent of the disponer, where the interest taken is an absolute interest (i.e. not a limited interest) and the inheritance is taken on the death of the disponer (i.e. the beneficiary's child).
- A child includes a foster child, a stepchild and a child adopted under the Irish Adoption Acts or under recognised foreign adoption rules. An adopted child is also recognised as child of his/her natural parents for CAT purposes

Groups B & C

Group B

- Grandparent (lineal ancestor), grandchild (lineal descendent), brother, sister, aunt or uncle.
- Aunt or Uncle means related by blood – the sibling of your parent only. Your mother's sister is your aunt, your aunt's spouse is not your uncle/aunt.

Group C

- All other individuals, including in-laws, cousins and “strangers”

Other

- Spouses/civil partners are not included in the groups outlined above, because gifts and inheritances between spouses/civil partners are exempt from CAT, unless they are divorced.
- Exemption also provided for transfers under legal agreement to divorce
- Note – exempt until divorced for CAT, but not living together as “husband and wife” will give rise to potential CGT on transfers (unless by legal agreement)

In her will, Sarah leaves a property worth €900,000 equally to her two children, Adam and Louise.

The value of Adam and Louise's benefit is €450,000 each. Neither Adam nor Louise have received any previous gifts or inheritances from either parent. They can both avail of the current Group A threshold of €400,000 in relation to this benefit. As each benefit exceeds the Group A threshold, they must both file an [IT38 Return](#).

Calculation of Capital Acquisition Tax (CAT) due for both Adam and Louise

Value of property	€450,000
Less Group A threshold	€400,000
Taxable excess	€50,000
Tax due @ 33%	€16,500

- a parent of the disponer and you inherit an absolute interest of an inheritance on the death of your child. An inheritance of a [limited interest](#) does not qualify for the Group A threshold.

Michael dies and, in his will, leaves:

a house to his mother, Catherine

and

- a bank account to his father, Adam.

As both parents are receiving an absolute inheritance with no conditions attached, Group A threshold applies to Catherine's and Adam's benefit from Michael.

Calculation Overview

- i. Ascertain MV of gift/inheritance
- ii. Deduct: liabilities/costs (1)
- iii. This equals = **Incumbrance Free Value**
- iv. Deduct: any consideration paid by the donee
- v. This equals = **Taxable Value**
- vi. Deduct: small gift exemption (if applicable)
- vii. Deduct: remaining threshold amount
- viii. This equals = **Taxable excess**
- ix. Multiply the taxable excess by 33%

(1) Examples includes estate admin costs, debts, legal fees, stamp duty on a gift

Valuation date of Gift

The valuation date of a gift is generally the **date the beneficiary receives the gift** — i.e., when the benefit becomes taken/received and the beneficiary can enjoy it.

How that works in practice

- Outright **gift** (normal case): valuation date = date of transfer / date gift is made and received.
- If legal **title lags** behind enjoyment: the valuation date is still the earliest date the beneficiary is entitled to possession/enjoyment, even if registration happens later.
- Gift into a **trust**: the valuation date for the beneficiary is usually when assets are appointed/transferred out to them (not necessarily when first put into trust), because that's when the beneficiary actually takes the benefit.
- **Free use** of property (e.g., rent-free occupation): a valuation date can arise each time a benefit is taken (often annually), based on the value of the use/enjoyment.

Valuation date – GIFT

The valuation date fixes:

- the **market value** to use,
- the **CAT pay & file deadline**, and
 - Valuation date between 1 January and 31 August: -Pay and file by 31 October in the same year.
 - Valuation date between 1 September and 31 December - Pay and file by 31 October in the following year.
- when relief **clawback** periods start.

Valuation date – Inheritance

Legally (CATCA 2003, s.30), it is the **earliest** of:

1. The earliest date on which the **personal representative / trustee / beneficiary** (or someone on their behalf) is **entitled to retain** the inherited property for the beneficiary's benefit.
2. The date on which the inherited property is **actually so retained**.
3. The date on which the inherited property is **delivered, paid or otherwise satisfied/discharged** to or for the benefit of the beneficiary (or someone claiming in their right).

In practice:

- **Most inheritances from an estate:**
 - Normally the **date of Grant of Probate** (or **Grant of Administration** on intestacy), unless the beneficiary could call for the benefit earlier under the will/estate administration.
- **Specific bequests where the beneficiary takes immediate possession (e.g. a watch, a house they already occupy):**
 - Often the **date of death**, because the beneficiary has the benefit from that date.
- **Residuary legacies / inheritances where assets must be sold first:**
 - Often the date when the executor can first set aside or pay over the residue, usually **not earlier than the Grant of Probate**, and sometimes later if sale/distribution must occur first.

Valuation date – Inheritance

1. Date of extraction of probate is the most common valuation date
2. Date of death if beneficiary is living in the property with the disponent
3. Joint ownership – date of death
4. Specific bequest of a tangible asset – e.g. jewellery – date of death (in a solvent estate)
5. Residue of estate – date of grant unless debts need to be cleared and assets sold
6. Residue with direction to sell assets – date of sale
7. Executor has 12 months to extract grant of probate (“executors year”) – Revenue are entitled to enquire if there is a long delay

Dwelling House Exemption

For an **Inheritance** (on/after 25/12/2016)

Conditions:

- ▶ The **disponer** must have occupied the residential property as his or her only or main residence as at the date of death.
- ▶ The **beneficiary** must have occupied the residential property continuously for a period of three years prior to the date of the inheritance as his or her only or main residence
- ▶ The **beneficiary** must have **no** interest in any other dwelling house at the date of the inheritance, and
- ▶ The **beneficiary** (if under 65 years at the date of the inheritance) must retain the dwelling house and continue to occupy it as his or her only or main residence for a period of **six years afterwards** or sell and reinvest the proceeds in another residence. Any amount not reinvested will result in a partial clawback of the relief

Dwelling House Exemption

- ▶ For a **Gift** (on/after 25/12/2016)
- ▶ **Conditions:**
 - i. **The donee must be a dependent relative of the disposer**
 - ii. A dependent relative is:
 - defined as a lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew of the disposer or the spouse or civil partner of the disposer
 - if under the age of 65 years; is permanently and totally incapacitated due to mental or physical infirmity from maintaining himself or herself or
 - is of the age of 65 years or over
 - iii. The relative must have occupied the dwelling as his/her only or main residence for 3 years prior to the date of the gift, **and**
 - iv. The relative must have **no** interest in any other dwelling at the date of the gift
 - v. The relative (if under 65 years at the date of the gift) must retain the dwelling house and continue to occupy it as his or her only or main residence for a period of **six years** from the date of the gift.

NB - Can work with PPR capital gains tax relief when transferred to a dependent relative

Dwelling House Exemption

Requirement to occupy the property for a six year period – exceptions:

- The beneficiary is deemed to occupy the dwelling house as his/her only or main residence throughout any period of absence during which he/she works in an employment all the duties of which are performed outside of Ireland or the beneficiary must reside elsewhere as a condition of his/her employment
- If the beneficiary cannot occupy or sells the house in consequence of him/her requiring long-term medical care in a hospital, nursing home or convalescent home, the exemption will not cease to apply.

Once conditions are satisfied:

- The beneficiary receives the dwelling house tax free and the market value of the property is ignored for aggregation purposes (i.e. the value of the property will not erode the beneficiary's CAT lifetime threshold limit)

Dwelling House Exemption

► Tax Appeals case 97TACD2022

6. On 8 June 2015, the Appellant was gifted the property by the disponers and the Appellant claimed a dwelling house exemption pursuant to section 86(3) CATCA 2003. A Deed of Conveyance, Declaration of Solvency, Property Valuation and Land Registry Documentation have been submitted in relation to the transfer of the property to the Appellant by the disponers.
7. The Appellant maintains that he continuously occupied the property as his only and main residence in the 3 year period ending 8 June 2015, and whilst he was not resident in Ireland for tax purposes, from first occupation, he returned frequently to the property and did not maintain any other residence during this period. Various documentation *inter alia* utility bills, domestic alarm agreements, television licence, sample travel documents, building works expenditure documents, planning application, school fees and motor tax document have been submitted by the Appellant in support of his appeal, in addition to a schedule detailing the Appellant's presence in Ireland, for the period [REDACTED]

- ▶ Situation: Adult son received a gift of a dwelling house from his parents and claimed the exemption. Revenue withdrew it and raised CAT.
- ▶ Issues tested: Whether he occupied the house as his only/main residence for the 3 years before the gift and continued for the 6-year “relevant period” after.
- ▶ Whether he was beneficially entitled to any other dwelling house at the gift date (including interests held via arrangements/trusts).
- ▶ Why it matters: It’s a very practical evidence case: Revenue scrutinised residency claims, travel patterns, utility bills, and whether another property interest existed even indirectly. Evidence file is everything — continuous occupation and “no other dwelling interest” must be provable with objective records.

substantiate that evidence. The Commissioner is not satisfied that the documentary evidence submitted *inter alia* various utility bills, the Appellant's drivers licence dated March 2013, domestic alarm agreements for the period December 2010 to December 2011 and December 2012 to December 2013 and a television licence for the period October 2014 to September 2015, on balance support a finding that there was any degree of continuity or expectation of continuity in relation to the property for the 3 years prior to the gift, in circumstances where the Appellant spent a considerable proportion of the year outside the jurisdiction. In fact, the Commissioner is of the view that there is no evidence, but for the limited travel documents referenced above, of the Appellant travelling to and from this jurisdiction, to illustrate any residence in the dwelling.

10TACD2017 — “Other dwelling house” disqualifier

- **Situation:** Inheritance of the family home; exemption claimed. Revenue challenged it because the successor may have had an **interest in another dwelling house** at the inheritance date.
- **Core point:** s.86(3)(b) is strict — **any beneficial entitlement to another dwelling house or part of one** can block the exemption.

(3) Subject to *subsections (4), (5), (6) and (7)*, a dwelling-house comprised in a gift or inheritance which is taken by a donee or successor who—

(a) has continuously occupied as that donee or successor's only or main residence—

(i) that dwelling-house throughout the period of 3 years immediately preceding the date of the gift or the date of the inheritance, or

(ii) where that dwelling-house has directly or indirectly replaced other property, that dwelling-house and that other property for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the gift or the date of the inheritance,

(b) is not, at the date of the gift or at the date of the inheritance, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house, and

(c) continues to occupy that dwelling-house as that donee or successor's only or main residence throughout the relevant period,

is exempt from tax in relation to that gift or inheritance, and the value of that dwelling-house is not to be taken into account in computing tax on any gift or inheritance taken by that person unless the exemption ceases to apply under *subsection (6) or (7)*.

61. As a result, on 27 October 2010, the date of the inheritance, the exemption claim in relation to the family home was *prima facie* available to the Appellant, the Appellant having satisfied the criteria as to occupation on the date of the inheritance and for three years preceding. Furthermore, the Appellant was not disqualified from claiming the exemption on foot of s.86(3)(b) because the Appellant was not, on 27 October 2010, '*beneficially entitled to any interest in any other dwelling-house*' in accordance with s. 86(3)(b) CATCA2003. The Appellant did not become beneficially entitled to these other properties until 29 March 2011 at the earliest, some five months after the date of the inheritance.

Deane v Revenue Commissioners [2018] IEHC 519 — High Court clarification

- ▶ Ms Deane had resided in the family home since childhood, and pursuant to her father's (the testator's) will she was entitled to a half-share in the residue of his estate, with the other half-share inherited by her brother. The will appears to have been very straightforward, bequeathing and devising the residue of the estate, without including any specific legacies.
- ▶ The testator died on 27 October 2010. The net estate was ascertained in March 2011; the grant of probate was extracted in May 2011; and the assets in the estate were distributed to the beneficiaries in August 2011. It appears that a deed of family arrangement was executed between Ms Deane and her brother, the effect of which was that Ms Deane would receive the family home from the residue of the estate (in relation to which she claimed dwelling-house exemption), and she also inherited a 50% interest in four other residential properties

- ▶ The question for consideration was whether, as of the date of death of the testator, Ms Deane was not beneficially entitled to any interest in any other dwelling-house within the meaning of s86 CATCA 2003. This identified the central dispute between the parties, being the meaning of the phrase “is not...beneficially entitled to any other dwelling house or any interest in any other dwelling house”, and it was noted that the word “interest” is one with many different meanings, both in an ordinary or natural sense and in a technical or legal sense.
- ▶ Revenue did not appeal the judgment, but on 31 December 2018 it issued an eBrief³ outlining its approach in light of the judgment, which confirms that a dwelling-house forming part of the residue of an estate is not to be taken into account in determining whether a successor has an interest in another dwelling-house at the date of an inheritance.

Agri – relief

Scenario 1 — Farm qualifies for Agricultural Relief, but 20% is development land (no relief)

- Parent gifts farm with market value **€3,000,000**.
- **80% (€2.4m)** is working agricultural land that qualifies for Agricultural Relief.
- **20% (€600k)** is development/rezoned land (or “hope value” portion) that **does not qualify**.
- Child meets farmer/active farmer conditions.
- No prior Group A benefits used.
- Group A threshold **€400,000**, CAT rate **33%**.

▶ **Step 1: Split value**

- ▶ Qualifying agricultural property: $€3,000,000 \times 80\% = €2,400,000$
- ▶ Non-qualifying development value: $€3,000,000 \times 20\% = €600,000$
- ▶ Step 2: Apply Agricultural Relief to qualifying part
Agricultural Relief reduces qualifying value by 90% → taxable at 10%.
- ▶ Taxable qualifying portion: **$€2,400,000 \times 10\% = €240,000$**
- ▶ Taxable non-qualifying portion: $€600,000$
- ▶ Total taxable value after reliefs: $€240,000 + €600,000 = €840,000$
- ▶ Step 3: Deduct Group A threshold
- ▶ $€840,000 - €400,000 = €440,000$ taxable excess
- ▶ Step 4: Apply CAT @ 33%
- ▶ $€440,000 \times 33\% = €145,200$ CAT payable

- ▶ **Scenario 2 — Full Agricultural Relief, but child already used €150k of Group A**
- ▶ **Facts**
- ▶ Same €3m farm, all qualifying for Agricultural Relief.
- ▶ Child previously received **€150,000** from a parent (post-1991), using part of Group A.
- ▶ Agricultural Relief conditions met.
- ▶ **Step 1: Apply Agricultural Relief**
- ▶ Relieved taxable value: $€3,000,000 \times 10\% = \text{€}300,000$
- ▶ **Step 2: Remaining Group A threshold**
- ▶ Group A threshold: €400,000
- ▶ Less prior benefits: €150,000
- ▶ **Threshold remaining: €250,000**
- ▶ **Step 3: Taxable excess**
- ▶ $€300,000 - €250,000 = \text{€}50,000$
- ▶ **Step 4: CAT @ 33%**
- ▶ $€50,000 \times 33\% = \text{€}16,500$ CAT payable

- ▶ **Scenario 3 — Agricultural Relief claimed, then clawed back (child leases out / fails conditions)**
- ▶ **Facts**
- ▶ €3m farm, initially treated as qualifying and child claims Agricultural Relief.
- ▶ Child does not continue to satisfy conditions post-gift (e.g., leases to non-qualifying person, stops meeting active farmer test, disposes within clawback window).
- ▶ No prior Group A benefits.
- ▶ **3A. CAT at the time of gift (with Agricultural Relief)**
- ▶ **Step 1: Relief**
- ▶ Taxable value: $€3,000,000 \times 10\% = €300,000$
- ▶ **Step 2: Threshold**
- ▶ $€300,000 - €400,000 = \text{Nil}$
- ▶ **CAT initially payable: €0**
(Return still filed because relief claimed.)
- ▶ **3B. Clawback position (relief withdrawn)**
- ▶ Once clawback happens, CAT is recalculated **as if no relief ever applied.**
- ▶ **Recomputed CAT without relief**
- ▶ Market value: **€3,000,000**
- ▶ Less Group A threshold: **€400,000**
- ▶ Taxable excess: **€2,600,000**
- ▶ CAT @ 33%: $€2,600,000 \times 33\% = €858,000$
- ▶ **Additional CAT due on clawback**
- ▶ $€858,000 - €0 \text{ already paid} = €858,000$, **plus interest** from original due date.

- ▶ **Scenario 4 — Parent gifts the farm but retains a life interest (limited interest + remainder)**
- ▶ Why this is common: wills/deeds often give the child the farm subject to the parent's right to income/occupation for life. Under CAT, that usually creates two benefits:
 - ▶ the **limited interest now**, and
 - ▶ the **remainder interest** later when the life tenant dies.
- ▶ Facts / assumptions
- ▶ Farm market value at gift date: €3,000,000.
- ▶ Entire farm qualifies for Agricultural Relief.
- ▶ Child meets Agricultural Relief conditions.
- ▶ No prior Group A benefits.
- ▶ Parent retains a full life interest.
- ▶ Use a life interest factor of 0.40 (illustrative only — actual factor depends on life tenant age per actuarial tables).

- ▶ **Step 1: Value the limited interest taken now**
- ▶ Remainder value = full value × (1 – life factor)
- ▶ Life interest factor: 0.40
- ▶ Remainder factor: 0.60
- ▶ Limited interest taxable “capital value” now:
 $€3,000,000 \times 0.60 = €1,800,000$
- ▶ **Step 2: Apply Agricultural Relief to the limited interest**
- ▶ Relief reduces value to 10%:
 $€1,800,000 \times 10\% = €180,000$
- ▶ Step 3: Deduct Group A threshold
- ▶ $€180,000 - €400,000 = \text{Nil}$
- ▶ CAT payable now: €0
- ▶ Still an IT38 is filed because a relief is claimed, and to record Group A usage.

- ▶ **Later event: death of life tenant (remainder falls in)**
- ▶ At parent's death, the child becomes fully entitled to the remainder — a **second inheritance benefit** arises.
- ▶ Assume farm still worth €3,000,000 at that later date and still qualifies for Agricultural Relief (if child continues to meet conditions).
- ▶ Remainder value brought into charge later:
Full value × life factor
 $€3,000,000 \times 0.40 = \mathbf{€1,200,000}$
- ▶ Apply Agricultural Relief:
 $€1,200,000 \times 10\% = \mathbf{€120,000}$
- ▶ Deduct **remaining** Group A threshold.
Since no threshold was used earlier (benefit was fully sheltered), **€400,000 remains.**
- ▶ $€120,000 - €400,000 = \mathbf{Nil}$
- ▶ **CAT payable on remainder: €0**
- ▶ **Solicitor drafting warning:**
If the child **fails Agricultural Relief conditions between gift and death**, the second event can become taxable (and may also claw back the first).

- ▶ **Scenario 5 — Farm + farmhouse: Agricultural Relief on land, Dwelling House Exemption on the home**
- ▶ **Why this matters:** a farmhouse can be worth a lot and may be better sheltered under the dwelling house exemption, leaving Agricultural Relief to cover the land/business side.
- ▶ **Facts / assumptions**
- ▶ Total property gifted = **€3,000,000**
 - **Farmhouse value:** €800,000
 - **Farmland / buildings value:** €2,200,000
- ▶ Child has lived in the farmhouse for years and **meets Dwelling House Exemption conditions** (main residence, no other dwelling interest, continues to occupy after gift).
- ▶ Farmland qualifies for Agricultural Relief.
- ▶ No prior Group A benefits.

- ▶ **Step 1: Apply Dwelling House Exemption to farmhouse**
- ▶ Farmhouse value exempt: **€800,000 → €0 taxable**
- ▶ **Step 2: Apply Agricultural Relief to farmland portion**
- ▶ Farmland taxable after 90% relief:
- ▶ $€2,200,000 \times 10\% = \textbf{€220,000}$
- ▶ **Step 3: Total taxable value**
- ▶ Taxable farmhouse: €0
- ▶ Taxable farmland: €220,000
- ▶ Total taxable value: €220,000
- ▶ **Step 4: Deduct Group A threshold**
- ▶ $€220,000 - €400,000 = \textbf{Nil}$
- ▶ CAT payable: €0
- ▶ **Solicitor notes**
- ▶ This structure is very defensible if the occupation facts are solid — but the dwelling house exemption is **easy to lose** if the child moves out, sells, or acquires another dwelling interest within the conditions period.
- ▶ If it's lost, CAT reappears on the full €800k farmhouse value (not relieved by Agricultural Relief).

Outstanding mortgage - a parent gives a gift of a house worth 300,000 to their nephew. There is a mortgage of 275,000 on the house.

- ▶ **1. Market value of gift**
- ▶ €300,000
- ▶ **2. Less: allowable liability taken over by beneficiary**
- ▶ Mortgage assumed/paid by nephew: €275,000
- ▶ **Taxable value of gift:**
 $€300,000 - €275,000 = \text{€}25,000$
- ▶ **3. Less: Group B threshold**
- ▶ Group B threshold available: €40,000
- ▶ **Taxable excess:**
 $€25,000 - €40,000 = \text{Nil (0)}$
- ▶ **4. CAT @ 33%**
- ▶ CAT payable:
 $0 \times 33\% = \text{€}0$

- ▶ **Key assumption:** the mortgage reduces the taxable value **only if the nephew actually takes the property subject to the mortgage and is the one who discharges it**. If the parent remains solely liable and continues paying, the deduction may not be available.
- ▶ **Aggregation warning:** if the nephew has received any earlier **Group B** benefits from this disponent (or other Group B disponent) since 5 Dec 1991, those reduce the available threshold and could create CAT.
- ▶ **Return position:** with a taxable value of only €25,000 and no relief claimed, an IT38 **normally isn't required** unless the nephew has other Group B benefits bringing him over the 80% filing threshold.

Market Value

- In calculating CAT on gifts/inheritances the market value of the benefit is used
- May require professional valuations
- Revenue may engage own valuer if dissatisfied with MV provided
- Normally shares in private company are discounted for a minority interest
- No discount for private company where controlled by 5 or fewer people and after the taking the benefit, the company will be controlled by the beneficiary and his/her relatives

Favourite nephew/niece – Group A 400k

- ▶ For the purpose of this relief, you are a nephew or niece if you are: the child of the disponer's brother, the child of the disponer's sister, the child of the disponer's brother's civil partner, **or** the child of the disponer's sister's civil partner.
- ▶ **Conditions for the relief**
- ▶ You must have worked for the disponer for the five years immediately before-receiving the gift or inheritance. During these five years, you must have worked for more than:
 - ▶ 24 hours per week at the place of business
 - ▶ **or**
 - ▶ 15 hours per week at the place of business, where the business is carried on exclusively by you and either the:
 - disponer
 - **or**
 - the disponer's spouse or civil partner.
- ▶ The relief applies only to assets used in the business. Group B threshold applies to non-business assets.
- ▶ Where the gift or inheritance includes business and non-business assets, liabilities must be apportioned between business and non-business assets.

- ▶ Favourite niece/nephew **may also qualify** for Agricultural Relief or Business Relief
- ▶ Tax Appeals case



AN COIMISIÚN UM ÁCHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

110TACD2022



Appellant

and

THE REVENUE COMMISSIONERS

Respondent



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10. On the 25th October 2017, the Appellant's agent sent further correspondence to the Respondent in support of the Appellant's claim for agricultural relief. For agricultural relief to be available to the Appellant it was necessary to prove that 80% or more of his assets qualified as "agricultural assets". The letter stated:

"the total inheritance was €1,369,572, the lands €1,350,000. The balance cash was €19,572. On 9 January 2009, [the Appellant] owned half his house with his wife. €25,000 and had 819 [REDACTED] shares worth €13 each or €10,647 and a van worth less than €1,000 and €7,713 in the credit union or €63,932 or 4.67% of the total i.e. over 95% in agricultural assets" Please find a copy of [the deceased's] accounts from year ended 5/4/2001, period ended 31/12/2001 and years 2002 to 2008 inclusive in euro. You will see the sheep were sold off to pay the nursing home bills over the years. If

- ▶ The average amount of wool a sheep produces annually has helped scupper a farmer's bid for 'favourite nephew relief' in the inheritance of his late uncle's €1.35 million farm.
- ▶ The nephew inherited 240ac of land from his late uncle, which was made up of 170ac of agricultural land and 70ac of forestry.
- ▶ The deceased was resident in a nursing home for five years before his death in 2009 and the nephew claimed to Revenue that he operated the man's sheep farm and there were 100 ewes on the land when the uncle fell ill.
- ▶ The farmer's agent claimed that there was no Capital Acquisitions Tax (CAT) due, as his client was entitled to "agricultural relief" and "favourite nephew relief".

- ▶ Agricultural relief has the effect of discounting down the value of agricultural assets by 90% of their market value for CAT, and Revenue agreed that the man qualified for agricultural relief.
- ▶ The farmer also claimed 'favourite nephew relief' which is a separate relief where recipients can qualify for reliefs only availed of by children of someone who has died if certain criteria are achieved.
- ▶ However, Revenue disagreed with the farmer that he qualified for 'favourite nephew relief' and issued a CAT bill for €21,788 for 2018. The farmer appealed the assessment to the Tax Appeals Commission (TAC).

- ▶ In its determination, TAC commissioner, Andrew Feighery found that the €21,788 CAT assessment stands. He found that the nephew did not spend the requisite time looking after the sheep on the inherited lands.
- ▶ The commissioner noted the nephew's agent's failure to engage with the Department of Agriculture, Food and the Marine (DAFM) to obtain any of the evidence suggested by Revenue.
- ▶ Feighery also stated he had established that the average amount of wool produced by a sheep is on average 2lbs to 30lbs/year and not the 2.5lbs/sheep alleged by the nephew's agent in evidence.
- ▶ The agent stated his figures concerning the sheep's wool was evidence of the 100 sheep being present on the inherited lands in 2004.
- ▶ In a letter in April of this year, the nephew's agent submitted by virtue of the deceased bequeathing the farm to the nephew that this was sufficient evidence to prove that the nephew satisfied the "favourite nephew" test.
- ▶ In the correspondence, the agent said his client's mother "beggared herself by paying nursing home costs for her beloved brother [the deceased] for many years and when the money ran out, a field of the lands was sold".
- ▶ "Of course it would be her son who would inherit the land. The deceased was seriously indebted to his sister. There is no clearer definition of favoured nephew," the agent added.

Document the proof

- ▶ It's a great “proof and drafting” lesson for solicitors:
- ▶ Relief turns on evidence, not just family story.
- ▶ Revenue looked for objective records (stock numbers, farming activity, time spent, etc.).
- ▶ If the work history can't be supported, the nephew drops back to **Group B threshold** even if Agricultural Relief applies

Agricultural Relief – 90% reduction

- Agricultural relief reduces the **market value** of **agricultural property** comprised in a benefit by 90%.
- Agricultural relief is available to a beneficiary who receives an absolute or a limited interest in agricultural property.
- In order to qualify for agricultural relief the beneficiary **must first satisfy the ‘farmer test’**

A ‘farmer’ for the purposes of the relief is:

1. An individual, and
2. 80% or more of the total market value of all assets including investments held by the beneficiary on the valuation date and after taking the benefit consists of agricultural property and
3. Satisfies the farmer ‘activity’ test

- Having satisfied the 80% test, the individual must also
 - be the holder of an ‘agricultural’ qualification and farm the land on a commercial basis for a minimum 6 years **OR**
 - spend 50% or more of normal working time farming land on a commercial basis for a minimum 6 years **OR**
 - Lease the land for a minimum 6 years and the person to whom the land is leased must – (not more than 50% of land leased for solar panels)
 - be the holder of an ‘agricultural’ qualification OR
 - spend 50% or more of the normal working time farming land

Gross value of assets – there is an exception in respect of an off-farm private principal dwelling house of the beneficiary that is not agricultural property.

Alex receives an inheritance from her father of a farm worth €1,000,000, machinery worth €100,000 and livestock worth €75,000. Alex owns her own home which is not a farmhouse, and which has a market value of €300,000 and is subject to a mortgage of €200,000. She also has a car worth €10,000 which has outstanding finance of €3,000. For the purposes of the asset test, the mortgage is deducted from the gross value of the dwelling house but the car loan is disregarded.

Agricultural Assets

Farm	€1,000,000
Machinery	€100,000
Livestock	<u>€75,000</u>
Total Agricultural Assets	€1,175,000
Combined Assets	€1,285,000

Assets prior to inheritance

House (less mortgage)	€100,000
Car	<u>€10,000</u>
Total Own Assets	€110,000

Asset test:

Agricultural assets (€1,175,000)

All assets $(€1,175,000 + €110,00) \times 100 = 91\%$

Alex satisfies the asset test.

Agricultural Property' means:

- agricultural land, pasture and woodland situate in Ireland, UK, or in an EU Member State
- crops, trees and underwood growing on such land
- farm buildings, farm houses and mansion houses as are of a character appropriate to the property
- farm machinery, livestock and bloodstock on such property
- A payment entitlement within the meaning of Council Regulation (EC) No 1782/2003 (i.e. support schemes under the common agricultural policy, e.g. single payment scheme)
- Where a beneficiary receives **trees or underwood** by way of a gift or inheritance, he will qualify for agricultural relief. **There is no requirement to meet the 80% limit in the 'farmer test'.**
- Agricultural property and other assets used in a farming business carried on by a company may qualify for business relief but not agricultural relief.

● Step 1

- Are there agricultural assets? If yes, go to Step 2

● Step 2

- Do the “farmer” test (i.e. 80% financial & farmer activity test)
- All liabilities are ignored (except for loans etc. on own PPR)
- If beneficiary is a farmer, go to Step 3

● Step 3

- Separate agricultural assets from non agricultural assets
- Apply 90% relief to MV of agricultural assets (= agricultural value)
- Identify liabilities (see next slide)

- Apportionment of general liabilities, costs and expenses (LCE) (where there are no secured loans):

- The portion relating to the Non Agricultural Assets:

$$\frac{\text{LCE} \times \text{Non Agricultural assets}}{\text{Total assets}}$$

- The portion relating to the Agricultural Assets:

$$\frac{\text{LCE} \times \text{Agricultural assets} \times 10\%}{\text{Total assets}}$$

Agri relief – secured liabilities

Treatment of LCEs where there are secured loans:

- The portion relating to the **Non Agricultural Assets:**

$$\text{LCE} \times \frac{\text{Non Agricultural assets}}{\text{Total assets} - \text{secured loans}}$$

- The portion relating to the **Agricultural Assets:**

$$\frac{\text{LCE} \times \text{Agricultural assets} - \text{secured loans}}{\text{Total assets} - \text{secured loans}} \times 10\%$$

Treatment of secured loans:

- ▶ No apportionment of secured loans
- Where consideration is paid, the amount is apportioned between Agricultural assets and Non Agricultural assets **in the same way** as for unsecured liabilities.

Clawback

- In addition to the '6 year activity test', if within that 6 year period the agricultural property:
 - Is disposed of, or compulsorily acquired and
 - the proceeds from such a disposal are not fully used to acquire other agricultural property within:
 - 1 year of the sale, or
 - 6 years of the compulsory purchase (10 years for development land);
- Agricultural relief is clawed back
- The relief is **not withdrawn** if the beneficiary dies within 6 years of the date of the gift/inheritance to which he/she claimed agricultural relief and the property is disposed of after his/her death.

Clawback

- ▶ Changes 2023;
- ▶ The commencement of the clawback period for agricultural relief is the **valuation date** rather than the date of gift/inheritance.
- ▶ In addition, a further return must be submitted to Revenue and any outstanding tax paid within 3 months of the clawback event.

Clawback example

- ▶ Ben received an inheritance of agricultural property from his uncle with a value of €500,000 in 2020. He claimed agricultural relief on the inheritance which reduced the value of the land for CAT purposes to €50,000 (i.e., reduced by 90%). Ben had no remaining tax-free threshold in Group B due to previous benefits taken and so had a CAT liability of €16,500.
- ▶ In 2022, he sold the land for €500,000 and used the proceeds to purchase an investment property. The agricultural relief claimed is clawed back and the CAT due recalculated as though the property was not agricultural property. This resulted in a recalculated CAT liability of €165,000 ($500,000 \times 33\%$)

Agricultural versus Business Property Relief

- ▶ Where conditions for both Business Relief and Agricultural Relief are met, the beneficiary must claim agricultural relief
- ▶ Transferee – an interest in expectancy

Example

David received an inheritance from his uncle Tom consisting of a life interest in agricultural property with remainder to his sister Louise. Louise dies before David, leaving her estate to her daughter Niamh. Under section 32(2) CATCA 2003, Niamh takes as transferee from Louise on David's death and CAT will be calculated based on the relationship between Louise and Tom. However the farmer tests will be applied to Niamh. She will be entitled to claim the relief subject to satisfying the relevant conditions for the relief.

New changes

- Introduction of new Section 89A with additional condition:
- Disponer/donor must also meet the active farmer test in the 6 years prior to the gift/inheritance
 - - new provision allows a split of the land between own farming and leasing in the 6 prior years
 - - replacement of farm property allowed in this 6 year timeframe
 - - can include inheritance/gift from own spouse in meeting 6 year timeframe
- Active farmer test for beneficiary also allows split of farm land between own farming and leasing in meeting the post valuation date 6 year test
 - - replacement of farm property remains allowable (as currently in s.89)
- Original provision that gift/inheritance received subject to investing in agricultural property within 2 years is not carried into new s.89A
- 6 year rule for will only begin when section is commenced – subject to further review and Ministerial commencement order
 - - if commenced 1/1/26 and farm transferred in 1/1/27 – this is the review period only and full 6 year rule will not be in effect until 1/1/32



**Minister for
Finance**



Sections 100 and 101 of the Finance Bill 2024 (as initiated) provide for the introduction of a revised form of relief from Capital Acquisitions Tax (CAT) for gifts and inheritances of agricultural property where certain conditions are met.

Subject to the enactment of these provisions in the Bill, the revised agricultural relief will be provided for in a new section 89A of the Capital Acquisitions Tax Consolidation Act (CATCA) 2003 and will apply to gifts and inheritances of agricultural property taken on or after 1 January 2025. It will replace the existing agricultural relief that is provided for in section 89 of the CATCA 2003, which will cease to apply from that date.

The revised agricultural relief, while similar in many respects to the existing agricultural relief, differs in certain respects.

A key change is the proposed introduction of two additional qualifying conditions, which relate to the ownership and use of the agricultural property prior to the date of the gift or inheritance. The first is that the person from whom the beneficiary takes the gift or inheritance (the “disponer”) must have owned the agricultural property for a minimum period of 6 years prior to the date of the gift or inheritance. The second is that the agricultural property must have been actively farmed by the disponer or a person to whom the property was leased in the 6 years prior to the date of the gift or inheritance.

The beneficiary of the gift or inheritance will be expected to retain appropriate evidence confirming that these qualifying conditions have been met.

The revised relief also introduces greater flexibility in how a disponent, or beneficiary as the case may be, satisfies the “active farmer” requirement. Section 89A will provide that this requirement may be met where part of the agricultural property is actively farmed and the remaining part is leased to an active farmer. Currently, where agricultural land is leased, it must amount to “substantially the whole” of the agricultural land owned by the farmer. Revenue accepts that substantially the whole of the property means at least 75% of the property by value. The revised relief facilitates more flexible use of the land by enabling a disponent or beneficiary to use a combination of personal active farming and leasing to an active farmer in their chosen proportion, once all of the agricultural property is used for the purposes of farming.

Facts

- Uncle buys farmland in 2023 as an investment.
- Dies in 2026 leaving land to niece who is an active farmer.
- Niece satisfies 80% test and active farmer rules.

Outcome under old s.89

- Niece qualifies (beneficiary-focused test).
- **90% Agricultural Relief available.**

Outcome under new s.89A

- **Fails disponent ownership test** (uncle owned land only ~3 years).
- **Agricultural Relief denied** (unless a specific transitional carve-out applies).

short-term pre-death acquisitions no longer “wash through”

After s.89A, you must diligence BOTH sides of the transfer: the child’s farmer status *and* the parent’s 6-year ownership/active-use history — and cash-to-land planning won’t qualify.

Agri relief – Tax Appeals

- ▶ Published TAC cases refusing Agricultural Relief are relatively rare; most disputes settle or are unpublished. The leading published refusal is 40TACD2022, and the leading published ‘loss of relief’ example is 14TACD2017 on clawback. Between them, they show the two big solicitor risk zones: **the 80% test on day one, and the 6-year compliance/clawback window after**

Small parcel of land

- ▶ The Appeal Commissioners, in February 2012, determined that a small parcel of land of 0.14 acres was not agricultural property. Also of interest is the UK case of *Starke (executors of Brown deceased) v IRC* [1996] 1 All ER 622 in which 2.5 acres of land with a farmhouse and other buildings was held not to be agricultural property.
- ▶ The use of the property is fundamental to agricultural relief. In *Rosser v IRC* (2003) SPC 368, two acres with a barn on them was regarded as agricultural while a house on the same holding was not regarded as agricultural.
- ▶ As a general rule, Revenue considers that small parcels of land of **less than two acres** may be too small to constitute agricultural property. The purpose of the relief is to encourage the productive use of agricultural land and to support intergenerational transfers of farms, not to give relief to a private residence with agricultural activities attached. The relief applies to land or pasture used to grow crops or to rear animals

TAC 40TACD2022

- ▶ The Appellant received gifts of agricultural property and non-agricultural property comprising residential property from her parents on the same day in October 2013 and claimed agricultural relief in accordance with Capital Acquisitions Tax Consolidation Act 2003 (CATCA), section 89. The Appellant argued that she received the agricultural property before she received the residential property and therefore after receiving the agricultural property she was a “farmer” and therefore entitled to reduce the market value of the agricultural property by 90% for the purposes of establishing a liability to capital acquisitions tax
- Revenue treated all benefits on the same valuation date **collectively**, so the residential property pushed her **below the 80% agricultural-asset test**.

Decision

- The TAC agreed with Revenue and **denied Agricultural Relief**

TAC 14TACD2017 – CGT/CAT set off

- ▶ Clawback not an 'event' thereby not considered for CGT/CAT same event set-off

Business Relief – 90% reduction

- ▶ Value before relief: €400,000
- ▶ Less 90%: €360,000
- ▶ Taxable value after relief: €40,000
- ▶ CAT is then computed on the €40,000 (subject to the beneficiary's CAT threshold).

Business Relief – exclusions

The following are **not** regarded as ‘relevant business property’:

- A business or shares in a company which carries on an activity-
 - wholly or mainly in dealing in currencies, securities, stocks and shares, land or buildings,
 - the making or holding of investments.

Relevant business property

- ▶ A business or interest in a business e.g. Sole trade
- ▶ Unquoted shares in a company giving the beneficiary
 - more than 25% of the votes in the company, or
 - company control with connected persons, or
 - at least 10% of the nominal value of the issued share capital where the beneficiary is employed full time by the company for the previous 5 years ending on the date of gift/inheritance
- ▶ Certain land, buildings, machinery or plant used for the purposes of the business/company, of which the disponent (with his/her spouse) had control

Facts: Inheritance of 100% shares in unquoted **trading** IT consultancy.
MV €5,000,000. Qualifies for 90% Business Relief.
Group A threshold €400,000. CAT rate 33%.

Step Computation		€
1	Market value of shares	5,000,000
2	Business Relief @ 90%	(4,500,000)
3	Taxable value after BR (10%)	500,000
4	Less Group A threshold	(400,000)
5	Net taxable amount	100,000
6	CAT @ 33%	33,000

CAT payable with Business Relief: €33,000

Impact comparison

Scenario	Taxable value after threshold CAT @ 33%	
With Business Relief	100,000	33,000
Without Business Relief	4,600,000	1,518,000
Tax saving from BR: €1,518,000 – €33,000 = €1,485,000		

Clawback

- ▶ Clawback (losing the relief)
- ▶ Business Relief can be clawed back for up to **6 years** after the date of the gift or inheritance if:
 - ▶ The business ceases to trade, or
 - ▶ The relevant business property is disposed of, unless:
 - It is replaced within the required time by other relevant business property that satisfies the rules, or
 - The cessation is due to bankruptcy or a bona fide winding-up on insolvency.
 - The clawback effectively recalculates the CAT as if Business Relief had never applied and charges the extra tax
- FA 2023 - makes the **valuation date** the commencement of the clawback period and include the obligation to file an additional CAT return and pay the tax within 3 months of clawback.

Business Relief Minimum Period of Ownership

- **Minimum Period of Ownership:**

the “relevant business property” must have been *‘comprised in the disposition continuously’* prior to the date of the benefit for a minimum period of:

1. **2 years** in the case of an inheritance, taken on the death of the disposer;
2. **5 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 disposer’s spouse, civil partner or by a trustee will count for the purposes of satisfying the minimum period of ownership requirement.

Apportionment of costs:

- Business relief is applied to the Taxable Value of the relevant business property
- If the benefit is comprised of **business and non-business assets**:
 - the **business liabilities** are deducted from the **business assets**, and
 - **general liabilities**, costs, expenses and consideration
 - paid for the benefit are, as far as possible, deducted from the **non-business assets**

This is a concessionary treatment of general liabilities costs and expenses.

TAC 132TACD2021

A gift of unquoted shares in a trading company. The donee claimed Business Relief on the shares. Revenue argued that large **cash balances and investment assets** inside the company were **excepted assets** under s.100 CATCA 2003, so Business Relief should be reduced.

Key issue:

Whether those assets were “**used wholly or mainly for the purposes of the business**” in the 2-year lookback period (s.100(2)), or were surplus / investment-type assets.

Outcome:

The Commissioner carried out a detailed asset-by-asset review and restricted relief to the extent assets were not genuinely required/used for the trade.

Note:

This is the go-to warning that **trading companies with big balance sheets** can lose Business Relief unless cash/investments are clearly tied to trading needs

TAC 85TACD2023



A son received shares in a **group of trading companies** and claimed Business Relief. Revenue denied relief on part of the company's deemed cash assets, saying they were excepted assets.

Key issue:

Same legal test: was the cash **wholly or mainly for business purposes** or effectively surplus? (s.92, s.100 CATCA).

Outcome (headline):

The TAC accepted strong evidence from the appellant (finance director) that cash was needed for working capital, FX hedging, capital projects, customer assurance, etc., and **allowed Business Relief in full on the cash balances.**

Note:

It shows **how to win** a BPR case: contemporaneous documentation + credible operational rationale for cash levels.

- Revenue sought to rely on *Barclays Bank Trust Limited v Inland Revenue Commissioners (1998 Sp C 158)* arguing that the Appellant needed to have a concrete use for the cash reserves.
- The Commissioner refused to attach any weight to these submissions noting that (i) the UK case is not binding on the Irish courts; and (ii) the wording of the UK legislation differed to the Irish equivalent legislation. While both the UK and Irish legislation requires that the assets are “***used wholly or mainly for the purposes of the business concerned***”, the UK legislation has an additional requirement that the assets should be “*required at the time of the transfer for future use*”. Arguably, the present case could be distinguished in any event, given the list of uses for the cash provided by the Appellant in the case.

1. The Commissioner referred to the Appellant as an “**honest and diligent witness**”, and placed significant weight on the evidence given by the Appellant. It was clear that a significant amount of supporting documentation was provided to the TAC in support of the various arguments made by the Appellant. This was vital in discharging the burden of proof on the taxpayer.
2. To avail of BPR on cash assets it must be possible to highlight the general business use for the cash assets. **However, the Irish legislation, unlike the UK legislation, does not require a person to pinpoint an exact future use for the cash in their business.**
3. While the Commissioner did not require a concrete use for the cash reserves, Revenue, in their guidance notes, appear to adopt a narrower view of the legislation in the context of “surplus cash” noting:[1]
4. *“This does not preclude taking into account the need for sufficient liquidity to cover the payment of liabilities in determining what constitutes an excepted asset in the first place – particularly as regards the amount to be treated as surplus cash”*
5. A taxpayer must be satisfied that the assets are not excepted assets under section 100 CATCA generally, including under section 100(7) CATCA (i.e., that the asset is not used wholly or mainly for the personal benefit of the disponent or a relative of theirs) and they must satisfy the more general *“wholly or mainly for business purposes”* test under section 100(2) CATCA.

TAC 85TACD2023

Commissioner's Decision - In considering the Appellant's evidence and the submissions the Commissioner noted that the funds were utilised within the Group for a variety of purposes including:

- the prudent decision to hedge against foreign exchange risk,
- to bankroll some of the large projects it was involved in; and
- that some of the funds held in the Group's bank account represented an advance payment for works to be completed.

The Commissioner felt that the cash held by the Group in its bank account was employed for a purpose by the business.

A review of the Group's Balance Sheet for the period prior to the gift confirms that this was the position for the preceding two years also.

Ask your client

- “What % of assets are **cash/investments/property**?”
- “Why was that cash needed **over the last 24 months**?”
- “Any capex plans? Show me minutes/budgets/contracts.”
- “Any property not used in the trade?”
- “Loans to directors/shareholders?”
- “Any plans to scale down/cease trade?”

CAT – Trusts

Tax outcome follows beneficiary entitlement, not label.

- ▶ Main types in minor-beneficiary planning:
 - Bare / fixed trust: minor absolutely entitled now.
 - Discretionary trust: trustees decide who/when/how much.
 - Accumulation trust: income accumulated at trustees' discretion.
 - Interest-in-possession / fixed remainder variants.
- ▶ Always read: entitlement in possession? powers of appointment? accumulation clauses?

Bare Trust

- ▶ Minor has immediate and absolute entitlement.
- ▶ Settlement is an immediate gift to the child.
- ▶ CAT assessed at settlement date on market value transferred.
- ▶ Normal Group thresholds apply (often Group A for parent settlor).
- ▶ Trustees/guardians file/assist CAT return on child's behalf.

- **Pros:**

- Simple; low admin.
- No DTT exposure.
- Future growth outside settlor's CAT threshold.

- **Cons:**

- CAT payable upfront if thresholds exceeded.
- Child takes full control at 18 (no trustee discretion).
- Harder to manage spendthrift / vulnerability risk.

Discretionary / Accumulation Trust – CAT deferred

- ▶ No beneficiary entitled in possession on creation.
- ▶ No CAT on settlement date.
- ▶ CAT arises when trustees appoint capital to a child.
- ▶ Appointment treated as gift/inheritance from settlor.
- ▶ Valuation date is appointment date; thresholds apply then
 - Pros:
 - Trustee control and flexibility (age staging, education, need).
 - CAT deferred; can plan around thresholds/events.
 - Cons:
 - Potential DTT 6% + 1% charges.
 - Higher admin and filing.
 - Growth before appointment increases CAT base.

DTT

- ▶ Once-off 6% charge on trust assets.
- ▶ Annual 1% charge each 31 Dec after 6% event.
- ▶ Applies to discretionary / accumulation trusts unless exempt.
- ▶ 6% event timing depends on principal objects' ages.

DTT – Minors

- ▶ “Principal objects” typically include settlor’s children.
- ▶ 6% charge deferred until there is no principal object under 21.
- ▶ Commonly: trigger when youngest child reaches 21.
- ▶ Annual 1% starts after 6% trigger date.
- ▶ Rate can reduce to 3% if trust fully wound up within 5 years of 6% event
- ▶ Compliance
 - DT1: settlor files within 4 months of creating discretionary trust.
 - IT4: trustees file/pay 6% charge when triggered.
 - IT32: trustees file/pay annual 1% charges.
 - Keep contemporaneous valuations for each charge date.

Bare Trust – 10 yr old

- ▶ Parent transfers €200k ETF portfolio into bare trust.
- ▶ Child absolutely entitled immediately.
- ▶ CAT assessed on €200k at settlement date.
- ▶ If within Group A threshold → no CAT now.
- ▶ Portfolio grows to €350k by age 18: no further CAT on growth.
- ▶ No DTT.

Disc Trust – 2 minors

- ▶ Parent settles €500k into discretionary trust for two children (ages 8 & 12).
- ▶ No CAT at settlement.
- ▶ Trust invests; value €650k when youngest turns 21.
- ▶ 6% DTT applies on €650k at that point; annual 1% thereafter.
- ▶ Trustees appoint €325k each at age 23 → CAT on €325k per child at appointment.

Fixed with accumulation trap

- ▶ Will trust for named minor (age 12):
- ▶ €600k to trustees for Liam
- ▶ Income must be accumulated until age 25
- ▶ Capital payable at 25 if Liam survives
- ▶ If not, remainder to siblings
- ▶ Client intent: 'fixed trust, CAT once, no DTT'.

Fixed with accumulation trap – timing risk

- ▶ Payment conditional on surviving to 25 → contingent interest at death.
- ▶ Not 'entitled in possession' until age 25.
- ▶ CAT arises when contingency satisfied (age 25).
- ▶ Valuation date = Liam's 25th birthday.
- ▶ Growth before 25 increases CAT base.

Fixed with accumulation trap – DTT

- ▶ Mandatory accumulation can bring trust into DTT regime.
- ▶ 6% DTT deferred until no principal object under 21 → usually age 21.
- ▶ Then 1% DTT annually until trust wound up.
- ▶ Illustration:
 - ▶ Value at 21: €780k → 6% = €46.8k
 - ▶ Ages 21–25: ~1% p.a. ≈ €33.6k
 - ▶ Value at 25: €900k → CAT on €900k (less Group A)
 - ▶ Result: DTT + later CAT on grown values.

Drafting points

- ▶ Fix A: bare/fixed trust to age 18 → CAT once, no DTT.
- ▶ Fix B: avoid mandatory accumulation; pay/apply income for child.
- ▶ Fix C: power to appoint out before 21 to exit before 6% trigger.
- ▶ Lesson: named beneficiary ≠ no DTT; income entitlement drives outcome.

ARF

Revenue's Pensions Manual (Chapter 23) summarises the position like this:

A) Spouse / civil partner

- ARF can be transferred into a spouse/civil partner ARF.
- No income tax on transfer and no CAT.

B) Child under 21 at the ARF holder's death

- No income tax charge on the ARF payment/transfer.
- CAT applies as a normal inheritance (using Group A etc.).

C) Child aged 21 or over

- Income tax applies to the ARF distribution at a flat 30% Case IV charge, deducted by the QFM.
- No CAT on that ARF benefit.

D) Anyone else (e.g., nephew/niece, sibling, cohabitant, friend, trust)

- Income tax applies, and
- CAT also applies in the normal way (Group B/C thresholds, aggregation, 33% rate).

So, for non-spouse/non-child beneficiaries, you can end up with **both layers**: income tax withheld first, then CAT on the net inheritance.

Example 1 — ARF left to spouse / civil partner

Tax treatment

- Transfer to spouse's ARF.
- No income tax and no CAT.

Computation

- ARF value: €500,000
- Income tax: Nil
- CAT: Nil

Net to spouse: €500,000

Example 3 — ARF left to nephew

Tax treatment

- Nephew is “any other person” → **income tax applies AND CAT applies.**
- Income tax is withheld first by the QFM; CAT is computed on the **net inheritance.**

Computation

1. ARF value: €500,000
2. Income tax @30%:
 $€500,000 \times 30\% = \text{€150,000}$
3. Net inheritance for CAT:
 $€500,000 - €150,000 = \text{€350,000}$
4. Apply Group B threshold (€40,000):
 $€350,000 - €40,000 = \text{€310,000 taxable excess}$
5. CAT @33%:
 $€310,000 \times 33\%$
 $= €310,000 \times 0.33$
 $= \text{€102,300 CAT}$

Net to nephew:

$€350,000 - €102,300 = \text{€247,700}$

Example 2 — ARF left to child aged 25

Tax treatment

- Child is **21 or over** → **30% income tax Case IV** applies.
- **No CAT.**

Computation

1. ARF value: €500,000
2. Income tax @30%:
 $€500,000 \times 30\% = \text{€150,000}$
3. CAT: Nil

Net to child:

$€500,000 - €150,000 = \text{€350,000}$

Spouse: €500,000 → **€500,000 net**

Child 25: €500,000 → **€350,000 net** (30% income tax, no CAT)

Nephew: €500,000 → **€247,700 net** (30% income tax + CAT)

CAT – Exempt inheritance

Certain inheritances taken by a parent are exempt from CAT where the following conditions are satisfied:

- the inheritance is taken on the death of the child, and
- the child had taken a **non-exempt** gift or inheritance from either or both parents within the period of 5 years immediately prior to the date of death of the child.

It is not necessary that the inheritance be of the same property or of the same value as the prior gift or inheritance

CAT – Exemptions

Support and Maintenance

- Gifts from parents to children for support and maintenance are exempt from CAT where the children are:
 - Minor children, or
 - 25 years or younger receiving full time education, or
 - Permanently incapacitated regardless of age.

CAT – Exemptions

Section 72 (inheritance) and Section 73 (gift) life policies

- Life policy for which the proceeds are used exclusively to discharge tax on an inheritance/gift
- Premium must be paid by the disponent/donor
- No tax deduction for the payment of the policy
- Successor/donee will then use the proceeds of the policy to pay their CAT
- Proceeds of the policy used to pay CAT are themselves exempt from CAT

Exemptions – Heritage Property

- ▶ paintings, drawings, sculptures, prints important books, archives, manuscripts, jewellery or collections scientific or historic collections other objects of national / scientific / historic / artistic interest
- ▶ Applies to gifts and inheritances
- ▶ National/scientific/historic/artistic interest (recognised as such).Kept permanently in the State (Ireland).Reasonable public access is provided (e.g., open days, viewings for recognised bodies) – for 3yrs prior to gift/inh.....Not held for trading (i.e., not stock of an art/antiques dealer).
- ▶ Claim on the IT38

Same event credit CGT – CAT

In plain terms:

- If the same transaction (the same event) involving the same asset gives rise to both CGT and CAT,
- Then the CGT actually paid can be credited against the CAT on that asset.
- The credit **cannot exceed the CAT** attributable to the **doubly taxed property**.
- If the donee **disposes of the property within 2 years** of the date of the **gift or inheritance**, the CGT credit is **withdrawn (clawed back)** to the extent of that disposal.
- Claimed on the IT38

Parent gifts an investment property to child.

- CAT on child after threshold/reliefs: €120,000.
- CGT on parent on same gift: €70,000.

Same event credit: €70,000

CAT payable: €120,000 – €70,000 = €50,000

If CGT had been €130,000, CAT would be nil (no CGT refund).

Rent free occupation

- ▶ Boyfriend living rent-free in girlfriend's home can be a taxable CAT gift.
- ▶ Deemed gift each 31 Dec while rent-free occupation continues. Annual value = market rent less any rent/clearly agreed contributions he pays.
- ▶ €3,000 annual small-gift exemption applies.
- ▶ As an unmarried partner → Group C, so benefits aggregate to his low lifetime threshold. CAT at 33% once the Group C threshold is exceeded.

CAT treatment of mortgage write-down under a Personal Insolvency Arrangement (PIA)

- ▶ Scenario: Individual in mortgage arrears enters a PIA; lender agrees to write down secured debt.
- ▶ CAT principle (general): Debt forgiveness can be a taxable gift in some cases.
- ▶ Specific rule for PIAs: No CAT arises on any benefit from debt reduced/discharged under a PIA / DSA / DRN.s.82(1)(cb) CATCA 2003 deems these benefits not to be a gift or inheritance.
- ▶ Revenue guidance confirms this exemption for PIAs. No CAT payable on the write-down amount.

Renunciation & CAT: does it create a gift to sibling?

- ▶ Pure renunciation before acceptance: not a CAT disposition by renouncer.
- ▶ Disclaimed bequest falls into residue; residue beneficiary takes from deceased.
- ▶ No gift from renouncer → no CAT event for sibling from renouncer.
- ▶ Gift risk only if: renunciation is directed/in favour of sibling, or made after acceptance → treated as inheritance + onward gift (two CAT charges).

DEED OF DISCLAIMER

To: The Personal Representative(s)/Executor(s) of the Estate of **[Deceased full name]**, late of **[address]**, who died on **[date of death]**.

I, **[Full name of disclaiming beneficiary]**, of **[address]**, **DECLARE** as follows:

1. Entitlement

I am a beneficiary named in the Will of the above-named deceased dated **[date of will]** (the "Will"), and I am entitled thereunder to **[describe bequest clearly, e.g., "a legacy of €___" / "the property known as ___" / "shares in ___ Ltd"]** (the "Bequest").

2. Disclaimer / Renunciation

I hereby absolutely and irrevocably disclaim, renounce and abandon all right, title, interest and benefit in and to the Bequest.

3. No Direction

This disclaimer is **unconditional** and is **not made in favour of any person**, nor is it intended to direct the destination of the Bequest.

4. No Acceptance / No Benefit

I confirm that I **have not accepted, taken possession of, received or otherwise benefited from** the Bequest or any part of it.

5. No Consideration

I confirm that **no consideration, compensation or benefit of any kind** has been or will be received by me in respect of this disclaimer.

6. Effect

I acknowledge that the Bequest shall fall into the residue of the estate and pass **in accordance with the Will and the Succession Act 1965**.

EXECUTED as a **DEED** on **[date]**.

Signed: _____

[Disclaiming beneficiary's name]

In the presence of:

Witness signature: _____

Witness name (print): _____

Witness address: _____

Witness occupation: _____

Small Give Exemption

- ▶ “The sum of €3,000 transferred on [date] is an outright gift from [disponer] to [donee] and is intended to fall within the small gift exemption (s.69 CATCA 2003) for the [year] calendar year.”
- ▶ Evidence of the transfer
 - Bank transfer record (preferred) showing payer, payee, amount, and date; or Cheque stub + lodgement, or other traceable payment.
- ▶ Cash gifts are valid but harder to prove — if used, get a signed receipt.
- ▶ Simple gift letter / receipt
 - One-page note signed by the disponer (and ideally acknowledged by the donee) stating:
 - names & addresses of both parties
 - amount and date
 - wording like “an outright gift with no conditions and no repayment expected” reference to “small gift exemption – s.69 CATCA 2003” (optional but helpful).
RevenueAnnual

Company “gift” to an individual: CAT implications (Ireland)

- ▶ CAT can apply: A gratuitous transfer by a company to a person is a “gift” for CAT if received without full consideration.
- ▶ Who is taxed: The individual beneficiary is liable to CAT (not the company).
- ▶ Threshold group: As a company is not a blood relative, the beneficiary is generally Group C → lowest lifetime threshold.
- ▶ Rate: 33% CAT on the taxable value above the Group C threshold (after exemptions).
- ▶ Reality check: If the benefit is really employment remuneration or a shareholder distribution, it’s usually taxed under income tax/BIK/dividend rules instead of CAT (facts–driven classification).

House is raffled

- ▶ Winner's CAT position: No CAT on winning a house in a bona fide raffle/lottery. Lottery winnings are exempt from CAT (s.82(2) CATCA 2003).
- ▶ Finance Act 2021 extended the exemption to non-cash prizes, so it covers a house.
- ▶ Key caveat: exemption assumes a genuine public raffle/lottery; a disguised connected-party transfer could be challenged as a gift.
- ▶ Other tax still relevant – Stamp duty is generally payable by the winner on the market value of the property when transferred (transfer tax separate from CAT).

Estates

Practical points: valuations –

1. Date of death value needed for probate application, SA2 and it also sets the capital gains tax base costs for future disposal by estate or by beneficiary
2. Valuation date (as per previous slide) – sets value date for capital acquisitions tax
3. When is an updated value needed –
 1. Long gaps between death and granting of probate
 2. Significant movement in valuations

Practical points: who is the vendor -

1. If probate is granted – executor can transfer to beneficiary unless there are debts to pay etc
2. If estate has debts and needs to sell property to clear these – then estate is the vendor
3. If will calls for sale and distribution of proceeds – then estate is the vendor
4. If will is silent and probate is granted – sale of property is presumably at the request of the beneficiary
5. Can be exceptions – e.g. sale by estate due to numerous beneficiaries per solicitor

Estate – registration

Practical points: registration of estate –

1. If estate is earning income e.g. rent
 1. Will need to submit Form 1 (Estate)
 2. Liable to 20% income tax
 3. R185 forms should be provided to beneficiaries who then declare Estate income Case IV less R185 credit in their own tax returns
2. If estate is disposing of assets
 1. May be liable to capital gains tax
 2. No liability for beneficiary and no relief for unutilised losses

Types of clearances -

1. Death clearance required for tax affairs of the deceased – 35 working days
2. CAT clearance required before distribution to non-resident beneficiary – 30 days
3. CGT clearance required before distribution of proceeds to non-resident vendor – 35 working days
4. CGT50 clearance required for certain sales – can be overnight via ROS application

How to register (ROS/MyEnquiries route – usually via your agent/solicitor):

1. Log into ROS
 1. Go to the eRegistration section.
 2. Choose “Register New Revenue Customer”.
2. Select the correct type
 1. Choose “**Register a Trust**” (this is the option used for an estate).
3. Enter estate details

You will be asked for, among other things:

 1. Name of the estate (e.g. “Estate of John Murphy, deceased”).
 2. Date of death.
 3. Details of the personal representative(s).
 4. A brief description of activity and a NACE code that reflects the nature of the estate’s income, if any (e.g. rental, farming, investment).
4. Complete and submit TR1 (if required)
 1. Executors/personal representatives are required to complete a Form TR1 to register the estate for tax where relevant (income tax, CGT, etc.).
 2. This is normally done by the solicitor/accountant on ROS, but it can also be paper-filed if necessary.
5. Revenue issues a tax reference for the estate
 1. Once processed, the estate will have its own tax registration number (separate from the deceased’s PPSN).
 2. This is then used for any returns (Form 11/Trust & Estate return, CGT, etc.) and for seeking tax clearance if needed (for example, on a property sale during administration).

Estates

Death clearance required for tax affairs of the deceased

- Revenue Tax and Duty Manual Part 46-01-02 (TDM)
- Responsibility of the personal representative (per reps) to settle the tax affairs of the deceased – this is a statutory responsibility under s.1047 – s.1051 TCA97
- - tax due must be deducted from Estate and Revenue can seek tax from the per reps if they have distributed the assets of the Estate without discharging the tax liabilities
- Per Reps must undertake due diligence on the tax affairs of the deceased in the year of death and the 4 prior tax years
- If the deceased was a chargeable person then the 4 prior year returns may already have been completed and there is then just a requirement to complete the year of death return
 - if the deceased was married and was the chargeable person then include joint income to date of death and there may then be a requirement to submit a return for the widow/widower for income and gains to the tax year end
 - if the deceased was married and was the non-assessable spouse, then include their income to death in the return of the assessable spouse

Death clearance required for tax affairs of the deceased (contd/...)

- Application for clearance - will need to complete Appendix 1 (Due Diligence) of the TDM which requires details such as:
 - Estate value and details such as date of death, per reps etc
 - Tax status of the deceased in the 4 years prior to death – sources of income, assets held etc
 - Details of assets sold in the 10 years prior to death
 - Details of any outstanding tax compliance issues
 - Per reps are obliged to provide the information “to the best” of their “judgement and belief”
 - Covers all tax heads
- Submit the clearance application via the correct channel in MyEnquiries (see para. 3 of the TDM) – this ensures that you receive the automatic acknowledgement which begins the 35 working day countdown
- Revenue recommend submitting the application after the SA2 probate application has been submitted – this enables them to match the asset details provided on both returns
- - however any tax liability of the deceased should be included on the SA2 – therefore the due diligence should be undertaken in advance of the SA2 submission
- Recommended that the per reps approve the clearance application before submission as it is ultimately their responsibility

Estates – non resident clearance

- Revenue Tax and Duty Manual CAT – Part 02 – Statement of Affairs (Probate) Form SA.2
- Application required where the beneficiary is non-resident
- - liability will fall on per reps or solicitor if the CAT is not paid (s.45AA(1) CATCA2003)
- Per reps/solicitor should ensure that the IT38 for the non-resident beneficiary is filed and paid prior to the payment of benefits
- Submit the clearance application via the correct channel in MyEnquiries (see Appendix 1 of the TDM) – this ensures that you receive the automatic acknowledgement which begins the 30 day countdown
- - attach IT38 and receipt for payment
- If the IT38 is held to be deficient by Revenue at a later date, they will not seek the tax from the per reps/solicitor if they acted in “good faith”

CGT Clearance

CGT clearance required before distribution of proceeds to non-resident vendor

- Revenue Tax and Duty Manual – Part 45-01-05
- Application required where the vendor is non-resident and the asset is liable to Irish capital gains tax e.g. land & buildings
- - liability will fall on agent of vendor (e.g. solicitor) if the CGT is not paid (s.1043 TCA97)
- Documentation required with application for clearance:
 - Completed Declaration as found in Appendix 1 of the TDM (signed by the non-resident vendor)
 - Completed Form CG1
 - Capital gains tax computation showing consideration, costs, base costs, reliefs claimed (e.g. PPR), losses forward etc
 - Receipt for payment of CGT
 - Copy of contract for sale
 - Details of use of property e.g. was it rented/holiday home etc
- Submit the clearance application via the correct channel in MyEnquiries (see Appendix 2 of the TDM) – this ensures that you receive the automatic acknowledgement which begins the 35 working day countdown
- The above applies whether or not a CG50 has been obtained or was required

CGT50 clearance certificate required for certain sales –

- Revenue Tax and Duty Manual – Part 42-03-01a
- Application required where the consideration for land & buildings or goodwill (of a sole trade/partnership) exceeds:
 - €1,000,000 for the sale of residential property
 - €500,000 for non-residential property
- Certificate not required for share sales unless company derives the greater part of its value from land & buildings
- Purchaser will deduct 15% from consideration if CG50 required and not provided
- Requirements for application for clearance (submitted via ROS):
 - All vendors need to be registered for CGT (including non-assessable spouses)
 - Full address and details of the asset being sold, including if originally obtained via gift/inheritance and whether all tax obligations have been met
 - Details of vendors (including tax numbers) and purchasers (tax number if available)
 - Signed copy of contract for sale (as generally the application is made between signing and closing)
 - If a signed contract is not available at the date of application – letter of undertaking from the solicitor to provide same
 - If all vendors are resident – only tick this box and CG50 will be issued overnight
 - For non-resident vendors – include CGT computation, receipt for payment or undertaking from solicitor that the tax will be paid from the proceeds – CG50 should issue within a few days (if not overnight)
- Solicitor will still require CGT clearance before issuing proceeds to non-resident vendor

CAT issues

1. Long gap between death and probate – valuation date is grant of probate. Thresholds will be date of death
2. Inheritances by minors – some wills place in trust, other are silent. Tax is deducted from benefit unless regrossing is provided for in the will
3. Free use of property – child living in parents house and pays for extension
 1. Add to title deed based on % contribution
 2. Loan to parent and deduct from property transfer

MyFutureFund – Overview

- Commencing 01 January 2026
- Applies where the employee:
 - Is aged between 23-60
 - Earns more than €20,000 p.a. in all employments (uses a 13 week lookback)
 - Has a Class A employment for PRSI
 - Has no pension (employee or employer) through payroll
- Voluntary opt-in for employees outside the age / income thresholds
- Opt outs available periodically
- Normally administered through payroll software

MyFutureFund – Contribution rates

	Employee	Employer	State	Total
2026–2028	1.5%	1.5%	0.5%	3.5%
2029–2031	3%	3%	1%	7%
2032–2034	4.5%	4.5%	1.5%	10.5%
2035+	6%	6%	2%	14%

MyFutureFund – Steps

- Consider options
- Register on www.myfuturefund.ie
- Check payroll software is up to date
- Set up variable direct debit in most cases
- Inform enrolled employees
- Do not offer employees pension advice

- ▶ John Bainbridge, AITI Chartered Tax Advisor
- ▶ Bainbridge Tax Consulting
- ▶ Dublin
- ▶ 01 – 902 2570 tax@bainbridge.ie

- ▶ Neil Mulcahy, Chartered Tax Consultant
- ▶ MGM Chartered Accountants
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