



Revenue



Cáin agus Custaim na hÉireann
Irish Tax and Customs

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Mr. Ken Foxe

Oifig na gCoimisinéirí Ioncaim
An Rannán Beartas & Reachtaíocht um
Chánacha Pearsanta
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2, Éire

Office of the Revenue Commissioners
Personal Taxes Policy and
Legislation Division
Dublin Castle
Dublin 2, Ireland

15 February 2016

Re: Freedom of Information Request No. 277 / 2016

Dear Mr Foxe,

I refer to your request of 19 January 2016 under the Freedom of Information Act 2014 seeking access to:

“Copies of any records held by the Department – to include letters, emails, official reports, memoranda and so on – relating to abuse of exemption from inheritance tax for those dwelling in an inherited property. This request to cover the period 1 January 2014 to the current date”.

The request was circulated to those areas in Revenue which might have records falling within the parameters of your request i.e. Personal Taxes Policy and Legislation Division, the four Operational Regions and Large Cases Division and a thorough search was conducted for such records in each area. Three records that come within the scope of your request have been located, all in Personal Taxes Policy and Legislation Division and all of which I am releasing to you in an unedited format as attached. I also attach a schedule containing details of the records which fall within the scope of your request.

Should you wish to have this decision reviewed, an application for review must be made not later than 4 weeks after notification of this decision. A copy of the review procedures is enclosed for your information.

Yours sincerely,

Sharonne O'Reilly

Capital Taxes Branch

Personal Taxes Policy & Legislation Division

Schedule of Records for FOI Request Reference No: 277/2016

Record Number	Brief description	No. of pages	Decision: Grant/Part Grant/Refuse	Section of FoI Act 2014 if Applicable	Record Edited
1	E-mail from D Murtagh to J Lynch and cc'd to M O'Donoghue, C Parkin and D O'Leary dated 24 April 2015	1	Grant	N/a	No
2	Attachment to Record 1 E-mail	8	Grant	N/a	No
3	E-mail string dated 20 August 2015 to 24 August 2015 Note: Attachment referred to in first e-mail in this string is not relevant to this request	2	Grant	N/a	No

Ward, Tony

From: Donal Murtagh <Donal.Murtagh@finance.gov.ie>
Sent: 24 April 2015 15:15
To: Lynch, Joe (PerTax_CapiTax)
Cc: O'Donoghue, Maurice; Ciaran Parkin; Des O'Leary
Subject: CAT Dwelling House exemption - Data and evidence gathering
Attachments: CAT Dwelling House Relief - Final.doc

Joe,

As discussed, this item is no longer on the Finance Bill list at this time. One of the reasons for this was a view that the collection of data and evidence necessary in order to take a view on the need for and scale of any changes to the existing provisions might not be available in the truncated timespan available for consideration of FB issues.

I know from our conversation that Revenue have already set in train some actions to gather whatever data on transactions in this area may be available together establishing whether there is evidence of significant abuse. In this regard, I am attaching a copy of the Finance Bill 2007 submission on the dwelling house exemption (the last occasion on which the provision was significantly amended). The submission included significant detail extracted from the records of Revenue's various districts of the numbers, value ranges and overall value of gifts and inheritances of dwelling house exemption transactions together with limited instances of potential abuse of the measure.

Would it be feasible for Revenue to carry out a similar examination of the records available to it in respect of the latest year for which the fullest data would be available and to revert to us with the results?

Regards,

Donal

Finance Bill 2007
Capital Acquisitions Tax - Dwelling House Relief

Mr Moran – to see

Mr McNally – to see

Minister

From Liam Murphy

Summary of Issue

A dwelling house relief for Capital Acquisitions Tax was introduced for inheritances in the 1991 Finance Act and was considerably extended and widened to include gifts in the 2000 Budget and Finance Bill. The features of the relief are:

- The beneficiary must live in the gifted / inherited house for 3 years before and 6 years after the gift or inheritance
- The beneficiary must not have an interest in any other house at the time of the gift or inheritance
- There is no limit on either the value of the house or the size of the land surrounding the house
- The donor / deceased does not have to live in the house prior to the gift / inheritance

Following a PQ last June, which is attached for reference, Revenue examined the relief and are concerned that it may now being used for tax avoidance by the wealthy – specific examples below suggest gifts have been made in the range €2¼m to €9½m. It is accordingly felt that the matter should be re-examined and it is proposed that the following changes are made.

Inheritances of dwelling houses

- continue to give full exemption, but only where both lived in the house for 3 years prior to the death of the disponent, and
- where this is not the case, exempt the first €0.5m of value in addition to the normal class thresholds.

Gifts of dwelling houses

- abolish the exemption, or, if it is felt to be too extreme,
- exempt the first €0.5m of the value of the house, but only where both lived in the house for 3 years prior to the gift.

However, if it is felt that these restrictions go too far, consideration should at least be given to tightening any changes to tightening up the current provisions in relation to Gifts only:

- Make it a condition of the relief that the beneficiary lived in a house owned by the disponent for 3 years before the gift. This is to copper-fasten the existing legislation to ensure that an individual who owned and sold his or her own home cannot claim that a house that is subsequently gifted to him or her (within weeks) is “directly or indirectly” replacing the home he or she sold, for the purposes of the 3 years condition, and
- Eliminate the potential of parents using this exemption to transfer capital to children living at home by buying a house for a child and gifting it to him/her.

Background

Finance Act 1991

A relief was introduced in the Finance Act 1991 in respect of inheritance of a dwelling-house taken by elderly brothers and sisters of the deceased. The conditions for the relief were:

- the brother/sister must have been 55 or over;
- he/she must have lived with the deceased for a minimum period of 5 years prior to the date of the inheritance; and
- he/she must have had no interest in any other house on the date of the inheritance.

The relief was capped at the lesser of £50,000 or 50% of the value of the house. Subsequent amendments (up until FA 1998) to this relief extended it to include siblings under the age of 55, nephews, nieces, parents and grandparents. The amount of the relief was extended to the lesser of 80% of the value of the house or £150,000. The period for which both the disponent and the successor were required to be resident in the house, prior to the date of the inheritance, was increased from 5 years to 10 years.

Budget and Finance Act 2000

The relief was radically altered in the Budget and Finance Act 2000. The underlying reason for this was that increases in house prices, particularly in Dublin, meant that other categories of persons could face hardship in paying a CAT liability when inheriting a house. This could happen in particular, where the survivor of an unmarried couple inherited the house they had both lived in. The survivor, in such circumstances, would only have been entitled to the Class 3 threshold, which is relatively small (€16,328 in 1999 and €23,908 in 2006). It could also happen where a child, who lived in a house with a parent, inherited the house on the death of the parent.

However, in the event, the terms of the new relief in 2000 made it significantly more generous and more widely available because of the following features:

- it applies to gifts as well as inheritances;
- it applies to all beneficiaries regardless of their relationship to the disponent;

- the requirement that the disponent resided in the house along with the beneficiary was abolished and the period of residence of the beneficiary, prior to the transfer, was reduced to 3 years ; and
- there is no limit to the value of the house – i.e. the relief became an exemption.

According to a survey recently undertaken by Revenue, the cost of the relief in respect of gifts and inheritances in the year ended 31 December 2005 was up to €28m. A breakdown of the value and number of the properties (or part thereof) involved are as follows:

Category	Number	Value
Gifts	189	€32,749,331
Inheritances	346	€107,345,595

A breakdown of these figures as between location and value of property is set out in the Annex* .

The Issue

The changes to the Relief in FA 2000 have provided opportunities (acknowledged by the tax profession back in 1999 when announced) for CAT avoidance and it would appear that they are being utilised for that purpose by the wealthy. The 2005 figures show that property with a value in excess of €1m was inherited tax-free on 19 occasions and was received as a gift tax-free on 4 occasions. More recent examples that have come to light are as follows:

- A couple sold their investment property so that they could claim a CAT exemption for a gift of a €2.25m house (in which they had been living for 3 years) from the wife's father – (she had already received a gift valued at €19m which was eligible for business relief). Her sister, who had likewise received a similar gift valued at €19m, is living in a house owned by her parents and one can expect that it will be gifted to her in due course. (A condition of the relief is that at the time of the gift, the successor/beneficiary did not have a beneficial interest in any other dwelling-house.)
- Two children of a settlor of a trust are beneficiaries of that trust. They have utilised their tax-free threshold in respect of parental gifts already received. The trustees bought a house, the children lived in it for 3 years, and it has now been gifted to them - valued at €2.5m.
- A newspaper report, earlier this year, indicated that a wealthy individual had purchased a house worth €9.6m, for his daughter to live in. No doubt in 3 years time it will be gifted to her.

* Whereas these figures are for 2005, the successor/donee would have been in occupation of the house concerned for not less than 3 years prior to the date of the inheritance/gift.

It would appear, therefore, that section 86 is being used by some wealthy individuals to avoid CAT and its provisions are, from a policy perspective, decidedly unfocussed. It is highly probable that, if section 86 relief is not curtailed, it will become the vehicle of choice for CAT avoidance when passing on wealth to the next generation.

Proposals

Up until FA 2000, the section was focussed on relieving possible hardship arising where certain relations of a deceased became liable for CAT when inheriting a “modest” dwelling house, which they did not own, but in which they had lived with the deceased for a period of time prior to the death of the deceased. This continues to be a reasonable policy approach and the question is whether any of the extensions to the relief made in FA 2000 depart from this policy approach in an unjustified manner. These extensions are considered below.

From the inheritance perspective

a) requirement that successor be related to the deceased

It is appropriate that the relief should continue to include “non-relatives” who have lived for a certain period along with the now deceased in a house owned by the deceased. This caters for among others, unmarried couples[†] including same-sex partners. (No CAT applies in the case of spouses.)

b) requirement that the successor lives with the deceased for a period up to date of death.

The removal of this requirement meant that an individual could provide a house for a dependent relative. If a person has been allowed, prior to the death of the deceased, to live in a house owned by the deceased (rent-free or otherwise) it might be argued that hardship could arise if the person, on inheriting the house in which he/she lives, has a liability to CAT, whether or not the deceased had also lived in the house. However, other than in the case of children, this scenario where the deceased did not live with the successor is likely to be significantly less common than the scenario where that the successor lived with the deceased. Even if there was hardship in such a scenario, section 59 CATCA 2003 gives power to the Revenue Commissioners to “*postpone the payment of CAT for such period, to such extent and on such terms (including the waiver of interest) as they think fit.*”

The abolition of the requirement, that the successor lives with the deceased, allows parents to purchase a house for a child to live in, and on the death of the parents, the child inherits the house tax-free. To all intents and purposes, this is a mechanism for the tax-free passing on of wealth to the next generation. As already noted, 19 dwellings with a value of €1m plus were inherited in the y/e 31December 2005 in respect of which section 86 relief was claimed. (The available data does not indicate whether the deceased and the successor both lived in the house concerned up until the date of death.)

In the light of the foregoing, consideration might be given to amending section 86 such that, where the deceased and the successor did not both live in the house

[†]This extension came after “The Report of the Working Group Examining the Treatment of Married, Cohabiting and One-Parent Families under the Tax and Social Welfare Codes” – August 1999.

concerned, only the first €500,000 of the value of the house be exempt from CAT, with the remaining benefit taxable (but subject to the relevant exemption thresholds, which is now €478,155 in the case of a child) and at 20% thereafter. Where the deceased and the successor both lived in the house concerned, the existing full exemption would continue to apply.

c) *requirement that the successor lives in the house for 3 years prior to the death.* This is a reasonable requirement.

From the gift perspective

d) *Extension of the relief to gifts as well as inheritances.*

The focus of the original relief was to alleviate hardship caused by a CAT liability imposed on a person who inherits a house in which they had been living with the deceased. It has subsequently been extended to include gifts. The reason may have been that similar hardship might arise to a person who is gifted a house in which he or she has been living for 3 or more years. As with inheritances, apart from transfers to children, this is an unlikely scenario and a legislative mechanism already exists to address hardship. Such a transfer is even less likely if the donor and donee are both living in the house concerned.

This extension to include gifts can, therefore, be used as a tax-free mechanism to pass on wealth to one's children or whoever during one's lifetime. Whereas Revenue have not as yet encountered such a case, it appears that it could be argued that the legislation affords CAT exemption to a child who takes up residence in a new dwelling (purchased by his/her parents) which is then gifted to him/her by his parents, all within a few days of the child leaving the parental home[‡].

As with inheritances, it is appropriate that the beneficiary need not be related to the deceased. If there is justification for the relief for gifts, it would probably not be too restricting to require donor and donee to both live in the house.

Consideration should, therefore, be given to either—

- abolishing the relief, as it applies to gifts; or, if this goes too far
- exempting from CAT the first €500,000 of the value of a house which is gifted, but only where both lived in the house for 3 years prior to the gift.

[‡] *The legislation combines the period of occupation in the new dwelling-house with the period of occupation in a dwelling-house that has directly or indirectly replaced other property for the purposes of the 3 year period. Another scenario that may be difficult to argue against is where parents buy a child's house and immediately gift it back and the child claims CAT exemption. In a recent case at Circuit Court a section 86 claim was rejected where—*

- *an individual sold his existing house in which he had lived in for 10 years,*
- *he moved into another house which his mother had purchased for €1.15m, and,*
- *two weeks later the mother gifted that other house to him.*

The claim was that CAT exemption for the gift of the house should be available as the house replaced a house that he had previously occupied. While the claim was rejected, Revenue's legal advice is that provisions of section 86 relating to replacement dwellings need to be tightened up.

Conclusion

The current provisions of section 86 leave the CAT exemption afforded thereby too unfocussed. Consideration should be given to the following changes.

As regards inheritances of dwelling houses—

- continue to give full exemption where both lived in the house for 3 years, and
- exempt the first €0.5m of value where the successor and the deceased did not both live in the house

As regards gifts of dwelling houses—

- abolish the exemption, or
- exempt the first €0.5m of the value of the house.

However, if it considered that the above proposals go too far, you may wish to consider the following technical amendments:

Keep the relief unchanged for inheritances, but in the case of gifts tighten up the current provisions relating to the replacement of one dwelling-house with another to ensure that —

- both houses are required to be owned by the disponent. This is to copper-fasten the existing legislation to ensure that an individual who owned and sold his or her own home cannot claim that a house that is subsequently gifted to him or her (within weeks) is “directly or indirectly” replacing the home he or she sold, for the purposes of the 3 years condition.
- a child is not treated as occupying a dwelling owned and also lived in by his/her parent(s), for the purposes of this relief. This is to deal with the situation where a child has been living at home with his or her parents and the parent buys a house which is then gifted to the child. (The legislation combines the period of occupation in the new dwelling-house with the period of occupation in a dwelling-house that has directly or indirectly replaced other property for the purposes of the 3 year period).

Liam Murphy

ANNEX

COST OF SECTION 86 CACTA 2003 IN Y/E 31/12/2005

	<i>GIFTS</i>		<i>INHERITANCES</i>	
Region	Number	Value €	Number	Value €
DUBLIN	75	20,216,263	140	67,384,554
BMW	25	3,851,763	64	12,151,931
ESE	56	6,689,891	73	15,549,760
SW	33	2,991,414	69	12,259,350
TOTAL	189	32,749,331	346	107,345,595

INHERITANCES OF DWELLING HOUSE OR PART THEREOF
per value range

VALUE RANGE €	DUBLIN	EAST SOUTH EAST	SOUTH WEST	BORDER MIDLANDS WEST	TOTAL
up to 99,000	17	15	26	11	69
100, 000 to 199,999	22	33	26	32	113
200,000 to 299,999	18	10	8	11	47
300,000 to 399,999	21	3	3	4	31
400,000 to 499,999	15	7	1	3	26
500,000 to 599,999	16	2	2	1	21
600,000 to 699,999	6	1	1	1	9
700,000 to 799,999	7	-	-	-	7
800,000 to 899,999	1	1	-	-	2
900,000 to 999,999	2	-	-	-	2
1m. to 1,499,999	10	1	2	1	14
1.5m to 1,999,999	1		-	-	1
2m to 2,999,999.	2	-	-	-	2
3m and upwards.	2	-	-	-	2
TOTAL	140	73	69	64	346

GIFTS OF DWELLING HOUSE OR PART THEREOF
per value range

VALUE RANGE €	DUBLIN	EAST SOUTH EAST	SOUTH WEST	BORDER MIDLANDS WEST	TOTAL
up to 99,000	31	29	11	3	74
100, 000 to 199,999	23	18	16	14	71
200,000 to 299,999	7	6	4	3	20
300,000 to 399,999	2	3	2	5	12
400,000 to 499,999	3	-	-	-	3
500,000 to 599,999	1	-	-	-	1
600,000 to 699,999	1	-	-	-	1
700,000 to 799,999	2	-	-	-	2
800,000 to 899,999	1	-	-	-	1
900,000 to 999,999	-	-	-	-	-
1m. to 1,499,999	1	-	-	-	1
1.5m to 1,999,999	1	-	-	-	1
2m to 2,999,999.	1	-	-	-	1
3m and upwards.	1	-	-	-	1
TOTAL	75	56	33	25	189

Ward, Tony

From: O'Donoghue, Maurice
Sent: 24 August 2015 11:55
To: Ciaran Parkin; Kennedy, Jean
Cc: Donal Murtagh
Subject: RE: CAT budget submission

Ciaran,

The submission sets out various options and costings fairly in my view and I have no particular issues with the submission.

Just to clarify at point 30 that a taxpayer has a statutory entitlement under s54 CATCA 2003 to pay tax on all gifts or inheritances (other than on gifts or inheritances on absolute interests in personal property) by monthly instalments over a period of 5 years and this is not a matter over which Revenue has a discretion to accept payment in this manner. The taxpayer is entitled to pay by instalments under s54.

On the broad issue of the CAT dwelling-house exemption my preferred option in an ideal world would be to levy CAT on all gifts and inheritances of dwelling-houses but on a reduced market value of say, 50% of the market value of the house.

The concept of levying CAT on a reduced market value of particular assets is already in existence for agriculture and business assets (90% reduction in market value).

This would be in conjunction with the abolition of the much abused dwelling-house exemption, would spread the burden over all house, and not result in certain houses being complete exempt from tax and other houses being fully taxed all based on certain arbitrary conditions.

Regards,
Maurice.

From: Ciaran Parkin [<mailto:Ciaran.Parkin@finance.gov.ie>]
Sent: 20 August 2015 16:59
To: Kennedy, Jean; O'Donoghue, Maurice
Cc: Donal Murtagh
Subject: CAT budget submission

Jean, Maurice,

Find attached a draft of the submission that Donal and I are preparing for the Minister regarding CAT thresholds and related elements. It's still very much in development (Donal will doubtless mould my slightly esoteric analysis into something more concrete) but we would appreciate any thoughts you may have on it. Donal says we're specifically interested in knowing about "anything that grates with you". Responses would be appreciated at some point next week, to both Donal and myself.

Many thanks,

Ciarán Parkin
Administrative Officer
Fiscal Policy Division
Department of Finance
0761007588

Please note that Revenue cannot guarantee that any personal and sensitive data, sent in plain text via standard email, is fully secure. Customers who choose to use this channel are deemed to have accepted any risk involved. The alternative communication methods offered by Revenue include standard post and the option to register for our (encrypted) MyEnquiries service on our website www.revenue.ie.

Review Procedures FOI ACT 2014

Where a decision is made to refuse access to information a person who:

- is dissatisfied with the initial decision or who
- has not received a reply within 20 working days of the receipt of request by Revenue

That person may seek an internal review. This review will be carried out by an official at a higher level than the original decision maker.

Requests for internal review should be submitted in writing to:

**Office of the Revenue Commissioners,
Information Management Branch
FOI Unit
Ground Floor,
Cross Block
Dublin Castle**

Such a request for internal review must be submitted within 20 working days of notification of the initial decision. The head of the public body may extend this period if he/she feels that there are reasonable grounds for so doing. Revenue must complete the review within 15 working days.

Where an internal review has been carried out and the requester is still not satisfied with the outcome, the requester may then appeal to the Information Commissioner.

Internal Review

If the person is not satisfied with the original decision they can apply for an Internal Review.

Where a fee has been charged for non-personal requests under Section 12 of the Freedom of Information Act:

A fee of €30 will be charged for the internal review (€10 for medical cardholders and their dependents)

Review Procedures FOI ACT 2014

Appeal to the Information Commissioner

If a person remains unsatisfied following the outcome of the internal Review, he/she is entitled to apply to the Information Commissioner for an independent review of the public body's decision

Where a fee has been charged for non-personal requests under Section 12 of the Freedom of Information Act:

- A fee of €50 will be charged for this appeal (€15 for medical card holders and their dependents)

Information Commissioner

The Office of the Information Commissioner was established under Section 43 of the Freedom of Information Act 2014. It is an independent office and has powers to review decisions made by a public body in certain circumstances as set out below:

Where a fee has been charged for non-personal requests under Section 12 of the Freedom of Information Act and Section 21:

- Decisions made on internal review
- Initial decisions on requests made personally by a head of a public body
- Decisions on charges where the fee in question exceeds €100.
- Decisions to extend the time for consideration of request
- Decisions to defer access
- Decisions to which the consultation procedures outlined in Section 38 of the Freedom of Information Act 2014 apply.
- Decisions to refuse access on the grounds that the FOI Act does not apply to the record concerned.

The Information Commissioner may not review:

- the initial decision taken by a member of staff acting under delegation
- matters subject to a ministerial certificate
- FOI decisions in relation to records relating to his office
- The issuing of a certificate by a Secretary General.

Review Procedures FOI ACT 2014

Generally matters can only be appealed to the Information Commissioner after the process of internal review has been completed. Decisions by the Information Commissioner are binding on the parties concerned subject to appeal to the High Court on a point of law. An appeal to the High Court may in turn be appealed to the Supreme Court

Application for review by the Information Commissioner must be made within 6 months of receiving notice of the decision or otherwise within 10 working days for a decision under Section 14 (extension of time limits) or a decision involving third party material under Sections 38 and 22(4). These periods may be extended by such further period as is determined by the Information Commissioner to be reasonable in the circumstances.

Appeals, in writing, may be made directly to the Information Commissioner at the following address:

**Office of the Information Commissioner,
18 Lower Leeson Street,
Dublin 2.**

Phone: 01 - 6785222

Fax: 01 - 6610570

E-Mail: info@oic.ie