

Dwelling House Relief (DHR) – Post Finance Act 2019

When an inheritance includes a family home, which is the main residence of the beneficiary, the house or apartment may be exempt from tax if the beneficiary does not own, or have an interest in, another residence and can meet certain conditions which are discussed below. Having a holiday home in Ireland or abroad, or a residential property that is rented out as an investment in Ireland or abroad will be a bar to claiming the relief.

If the dwelling is exempt it is not subject to CAT and does not have any impact on the tax free threshold.

Definition of a Dwelling

A dwelling includes any building or part of a building used or suitable for use as a residence so the term covers both houses and apartments. Up to 1 acre of garden or grounds will also qualify for relief provided it is occupied and enjoyed with the dwelling. Where the property is larger than 1 acre, the part of the property most closely linked to the house dwelling is included in the relief and the balance of the property is not exempt.

Conditions for Relief

To qualify for DHR on an inheritance, the following conditions generally must be met:

- The person giving the property must occupy the dwelling as his or her only or main residence at the date of death.

- The beneficiary must not be beneficially entitled to any other dwelling at the date of the inheritance.
- The beneficiary must have occupied the dwelling continuously as a main residence for the 3 years preceding the inheritance.

If the dwelling was replaced during the 3 year period the beneficiary must have occupied both the original and replacement dwellings for at least 3 out of the 4 years prior to the inheritance.

The beneficiary must retain ownership and continue to occupy the property as a sole or main residence for 6 years from the date of death, unless the beneficiary is 65 or older at the date of inheritance.

Periods when a beneficiary is prevented from living in the property due to mental or physical infirmity are deemed to be periods of occupation.

Revenue Guidance

Only 1 property can be considered the sole or main residence at any given time. Revenue's CAT Manual (Part 24) clarifies that "residence" refers to a dwelling habitually lived in and used as a home so actual physical occupation is required.

Where more than 1 residence is used the "main" residence is the 1 occupied for the majority of time. Revenue apply a "time test" to determine the main residence, though other factors may also be relevant.

Ownership of Multiple Dwellings

Relief is not available if the beneficiary holds a beneficial interest in another dwelling at the date of inheritance. However this is a "point in time" test applied at the date of the inheritance so acquiring another dwelling after the inheritance does not affect the relief (provided it does not come from the person who is passing on the DHR property).

There was an anti-avoidance provision introduced in Finance Act 2018 which provides that a person is deemed to remain the owner of a property he transfers to

a discretionary trust if he is an object (i.e. a potential beneficiary) of that trust.

Finance Act 2019 tightened up the terms of the relief by providing that if a beneficiary receives a DHR property and then goes on to inherit a further property from the same person then the relief will cease to apply on the date on which the other property is acquired.

Clawback Provisions

The relief may be clawed back in certain circumstances, and in that event the beneficiary will need to recalculate the CAT on the original inheritance and may have to pay tax to Revenue.

A clawback will occur if the beneficiary sells the dwelling within 6 years, unless:

- the beneficiary is aged 65 or over at the date of inheritance,
- the sale or non-occupation is due to long-term medical care, certified by a medical practitioner, or
- the beneficiary is required to live elsewhere due to employment or work abroad.

In the event of a sale a replacement dwelling may be acquired with the sales proceeds to retain the relief, but the original and replacement properties must be occupied as the only or main residence of the beneficiary for 6 out of 7 years from the date of the inheritance if DHR is to be retained. This means that the maximum gap in time between leaving the DHR property and moving into the new property is 12 months.

If the new property costs less than the sales proceeds of the DHR property a partial clawback occurs. For example, if a beneficiary sells the DHR property for €500,000 and buys a replacement for €400,000 then 80% of the sales proceeds will have been reinvested and 80% of the relief will be retained (with 20% being clawed back).

Gifts to Dependent Relatives

The relief is largely restricted to inheritances. From 25 December 2016 a gift cannot qualify for relief unless it is made to a dependent relative, i.e. a person who is permanently and totally incapacitated from maintaining himself or a person over the age of 65. "Relative" is defined to include lineal ancestors and descendants, siblings, uncles, aunts, nieces and nephews of the person giving the property or the spouse or civil partner of that person.

If a property is being gifted to a dependent relative the usual condition that the person giving the property must have lived in it does not apply.

Conclusion

Dwelling House Relief can be extremely valuable as in many cases the family home is the most valuable asset in an Estate. O'Hanlon Tax Limited can assist in establishing if a proposed gift or inheritance will qualify for the relief and can deal with any clawback implications if the relief ceases to apply.