

# Credit Against CAT for CGT Paid

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Where a gift gives rise to CGT and CAT on the same property it may be possible to credit the CGT paid by the person transferring the asset against the CAT due from the person receiving it so that the amount of CAT payable is reduced.

The relevant provision is S. 104 Capital Acquisitions Tax Consolidation Act 2003 (CATCA 03) which stipulates that both taxes must arise on the same event and on the same property.

Examples of qualifying events might include:-

- Gifts of property, stocks, and shares.
- Appointment of property from a discretionary trust.
- Termination of a life interest where a further interest arises.

## Taxes Arising on the Same Event

If a parent gifts a rental investment property which has risen in value to a child by signing a transfer deed, the transfer gives rise to CGT for the parent and CAT for the child and the CGT paid by the parent can be offset against the CAT the child has to pay as the transfer by deed is a single “event” giving rise to both taxes, and the rental property is the asset giving rise to both taxes so there is only 1 asset involved.

However if the child inherits a rental investment property which has risen in value since the date of death, and the property is sold by the Estate to pay the taxes arising, the offset is not available. The child is subject to CAT on the inheritance

received when the parent died. The CGT arises when the property is sold by the personal representative so there are 2 different events involved.

## Clawback of Relief

S. 104 CATCA 03 also provides that if the beneficiary disposes of the asset within 2 years of acquiring the asset, then the credit will be clawed back.

## Key Points

The key points to consider in relation to the credit are: -

- The CGT and CAT must arise on the same event and on the same property.
- The CGT credit cannot exceed the CAT payable on the doubly taxed property.
- CGT arising during the administration of an Estate does not generally qualify for a CAT credit. Instead, it may be deducted as a liability to reduce the taxable value of the inheritance if the contract is signed before the valuation date.
- If a disponent settles assets in a discretionary trust, then the CAT would not arise until the assets are appointed out of the trust. Any tax payable by the disponent when the assets are settled into the trust would not be available as a credit, but CGT arising on an appointment from a trust will generally be allowed against the beneficiary's CAT on the appointment.
- If the beneficiary disposes of the asset within 2 years of acquiring the asset, then the credit will be clawed back. This can lead to practical difficulties if some of the assets are sold to fund the tax – e.g. units in an investment undertaking.

## Planning to Maximise Relief

Any inheritance planning should take account of credits that may be available for CGT and equivalent taxes and match them against a CAT liability where possible. In some cases consideration may be given to creating a CAT charge to use the CGT credit. In other cases consideration may be given to passing assets which

will have a tax charge on a gain to beneficiaries who will have a CAT liability and can use the credit.

## Gains on Investment Products

There are a number of complex provisions in the Taxes Consolidation Act 1997 (TCA 97) which deal with the taxation of investment products, and apply an income tax charge to the gain. As the underlying profit is in the nature of a gain S. 104 CATCA 03 has been imported into the following sections so that the income tax can be set against CAT payable by a beneficiary: -

- Relevant fund tax payable on an Irish life assurance policy, which arises on the death of a person (S. 730GB TCA 97).
- Tax payable on the disposal of foreign life policies issued by foreign life assurance companies carrying on a business in a Member State of the European Communities, a State which is an EEA State, or a State which is a member of the OECD and has a double taxation agreement with Ireland (S. 730K (5) TCA 97).
- Tax payable on Irish investment undertakings as a result of the death of a person (S. 739G (5) TCA 97).
- Income tax payable on the disposal of an interest in a good offshore fund (S. 747E (5) TCA 97).