

How complicated can 3 Thresholds be?

The CAT payable depends on the relationship between the disponent and the beneficiary. It also depends on prior benefits taken from any disponents which fall into the same CAT threshold group.

For example, a prior benefit received from a mother will be taken into account when calculating tax payable on a current benefit from the beneficiary's father. However, a prior benefit received from a brother will not. These classes of relationship are known as 'groups'.

These relationship groups are defined in Schedule 2, CAT Consolidation Act 2003 ("CATCA 03").

Changes were included in Finance (No. 2) Act 2023 ("F (No 2)A 23") to ensure foster children can avail of the group (b) CAT threshold based on their relationship to the family of their foster parents.

Foster Children

Prior to "F(No 2)A 23", while the foster child was considered a child of the disponent for CAT purposes, other relationships could not automatically be inferred from this. For example, the foster child was not treated as a grandchild of the foster parent's parents.

As a result of S. 78 "F(No 2)A 23", a foster child can now avail of the following thresholds:

- Group (a) on benefit taken from a foster parent.

- Group (b) on a benefit taken from another foster child fostered by the same person.
- Group (b) on a benefit taken from a child or stepchild of a foster parent.
- Group (b) on a benefit taken from lineal ancestors of a foster parent, such as the parent of the foster parents, i.e. foster grandparents
- Group (b) on a benefit taken from a brother or sister of a foster parent, i.e. foster uncle or aunt.

It should be noted that the legislation only extends the group (b) threshold to benefits taken from the relevant family members. It does not extend the higher group thresholds in the case of benefits given by a foster child to the foster family.

Also, it should be noted that the legislation does not preclude the foster child from using the group (a) or group (b) thresholds in respect of benefits taken from or given to their biological or birth family, so the thresholds can also be used in the following situations:

- Group (a) on benefit taken from a biological parent.
- Group (b) on a benefit taken from a sibling or half siblings
- Group (b) on a benefit taken from lineal ancestors, e.g. grandparents
- Group (b) on a benefit taken from a brother or sister of a parent, i.e. Aunt or Uncle.

This is in contrast to the position where a child is adopted. The effect of an Irish adoption order is that the child legally becomes the child of the adopters as if born to them, and all of the rights and duties of parents and children apply. The adoption severs the legal link to the natural parents. However, the tax legislation specifically provides in Sch 2 Para 10 CATCA 03 that if Revenue are satisfied that the disponent was the natural parent of the adopted beneficiary the adopted beneficiary can be treated as a child.

Again, the provision is narrow in focus and gifts taken by an adopted child from their biological siblings, uncles, aunts, or grandparents would all be treated as a group (c) benefits.

What is a Foster Child - Post F(No 2)A 23?

A foster child is a child who has been formally fostered by being placed in the foster care of another person under the Child Care Regulations.

The Child Care Regulations means the Child Care (Placement of Children in Foster Care) Regulations 1995 (S.I. No. 260 of 1995) or the Child Care (Placement of Children with Relatives) Regulations 1995 (S.I. No. 261 of 1995).

Alternatively, a child who has been informally fostered can also qualify for the relief if he can show that he is a person who:

- resided with another person, and
- was under the care of, and maintained by that person, for periods of at least 5 years when taken together while the child was under 18.

Group (a) Threshold

The group (a) threshold applies where the beneficiary is a:

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

The group (a) thresholds also applies to the following:

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

These provisions ensure that the position of a civil partner mirrors that of a spouse.

The definition of 'child' for the purpose of establishing group (a) threshold is set out in S. 2 CATCA 03 and is extremely wide for CAT purposes. 'Child' includes:

- biological child (marital or non-marital);
- adopted child (adopted under an adoption order within the meaning of section 3 (1) of the Adoption Act 2010 or the subject of a foreign adoption recognised under that Act;
- a step-child;
- a biological child validly adopted by other adoptive parents;
- a biological child fostered by other foster parents; and
- foster children as outlined above.

The word 'parent' is not specifically defined in CATCA 03 so the usual meaning applies and there is no specific extension of the legislation to bring the 'civil partner of parent of child' into the line with the tax treatment of a parent. The tax position of children of civil partners is analogous to that of step-children in this regard.

The group (a) threshold also applies where a parent inherits an absolute interest from a child on the death of that child. If the parents inherits a limited interest the group (b) threshold applies. In the case of an inheritance by a parent from a child, the exemption in S. 79 should also be considered.

Section 79 CATCA 2003 provides an exemption from CAT for an inheritance taken by a parent from a child on the death of the child where the child had taken a non-exempt gift or inheritance from either or both of his parents within the period of five years immediately prior to the date of death of the child. A 'taxable benefit' is generally any non-exempt benefit, generally a benefit of over €3,000 in any one year.

Group (b) Threshold

Group (b) applies where the beneficiary is a lineal ancestor (i.e. parent, grandparent, great grandparent etc.), lineal descendant other than child or minor child of a deceased child (i.e. grandchildren, great grandchildren etc., except of course minor children of a deceased child), brother or sister or child of a brother or sister or child of the civil partner of a brother or sister.

A step brother or sister is not a brother or sister for this purpose.

The group (b) threshold also applies to the following scenarios:

- Child of a brother or sister
- Foster siblings (children fostered by the same person)
- Children and step-children of foster parents
- The child of a sibling's civil partner is included under group B even though there is no blood relationship.

Group (c) Threshold

Group (c) applies where the beneficiary is anybody else.

This will include benefits taken by uncles, aunts, step-brothers and sisters, grand nephews and nieces, cousins, and of course, strangers in blood.

It should be noted that while a benefit received by a nephew/niece (child of brother or sister) from an uncle/aunt is Group (b), a benefit received by an uncle/aunt from a nephew/niece (child of brother or sister) is Group (c).

As we have seen, 'child' includes a step-child. A step-child of a sibling will be a 'child of a brother or sister' and Group (b). However, a step-sibling is not a brother or sister and thus the child of a step-brother or sister is Group (c).

Thresholds for Parents

The CAT threshold that applies where a gift is received by a parent from a child can be relatively complex. In practice there are 3 possible treatments from a CAT perspective, depending on the type of asset received, and the level of assets previously given.

Parents Exemption: S. 79 CATCA 03 provides for an exemption from CAT for certain inheritances taken by parents. The section applies where a parent takes an inheritance on death, if the deceased child took a non-exempt gift or inheritance from either parent within the period of 5 years immediately before his or her death.

Sch 2 Para 1 CATCA 03 provides that class (a) group threshold will apply where the beneficiary is a parent of the disposer, the interest taken is not a limited interest, and it is taken on the death of the disposer. It follows that a parent taking an absolute interest in a benefit on the death of a child takes a class (a) threshold.

If a benefit does not fall within any of the categories above then the parent will come within the standard class (b) category for CAT purposes as a lineal ancestor of the disposer.

Examples of Thresholds

Benefits taken from a Child

- A gift from a child – group (b)
- An inheritance of a life interest from a child – group (b)
- An inheritance of an absolute interest from a child – group (a)
- An inheritance from a child where the child received a non-exempt gift from either parent within 5 years of the child's death – exempt

Benefits taken from an Aunt/Uncle

- A gift or inheritance from the brother of a father – group (b)
- A gift or inheritance from the brother of an adopted father – group (b)

- A gift or inheritance from the brother of a stepfather – group (b)
- A gift or inheritance from the brother of a foster father – group (b)
- A gift or inheritance from the brother of a biological father where a child has been fostered – group (b)
- A gift or inheritance from the brother of a biological father where a child has been adopted – group (c)

Benefits taken from a Sibling

- A gift or inheritance from a brother – group (b)
- A gift or inheritance from a half-brother (i.e. one parent in common) – group (b)
- A gift or inheritance from the biological child of an adopted father – group (b)
- A gift or inheritance from the biological child of a foster father – group (b) A gift or inheritance from the biological child of a stepfather – group (c)

The following example illustrates how thresholds can change over time where a child of a disponent dies:

Joe is married to Mary and they have one child, Aileen (age 7). Every year Joe's mother, Joan, gives gifts to Joe, Mary and Aileen. Joe dies and Joan continues to make yearly gifts to Mary and Aileen.

While Joe was alive, the gifts to Mary would have been a group (c) benefit; however, once Joe dies any benefit from Joan is group (a) benefit as Mary is the surviving spouse of Joe (Sch 2 Para 6 CATCA 03).

While Joe was alive, the gifts to Aileen would have been a group (b) benefit; however, once Joe dies any benefit from Joan is a group (a) while Aileen is under 18. Once Aileen turns 18, any benefit taken from her grandmother, Joan will be a group (b) benefit.

This may result in a higher CAT liability if Mary and Aileen have group (c) and group (b) thresholds available but have used up all of their group (a) threshold on

gifts or inheritances taken from parents.

Caveat: These notes are intended as a general guide to the CAT tax-free thresholds. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances so OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect. It should also be noted that the Revenue approach may change over time and that the relevant legislation may be amended