Ireland

Contacts

Limerick

Barrington House Barrington Street Limerick Ireland	**John Heffernan** john.heffernan@ie.ey.com +353 61 317784 (Limerick) +353 12 211 219 (Dublin)

Dublin

Harcourt Centre Harcourt Street Dublin Ireland	**Audrey Lydon** audrey.lydon@ie.ey.com +353 12 212 107

1. Types of tax

1.1 Inheritance tax

Inheritances in Ireland are liable to capital acquisitions tax (CAT), which is the tax levied on inheritances and gifts. There is no estate tax in Ireland; instead, CAT is levied on each beneficiary in an estate, based on whether the inheritance is within the charge to CAT and the value of the benefit. Each beneficiary is allocated a threshold depending on his or her relationship with the deceased. The value of the benefit is aggregated with certain other gifts and inheritances previously received by the beneficiary, and the excess is taxed at the current rate of 33%. The tax is payable by the beneficiary who is accountable for the tax.

There is no stamp duty payable on an inheritance, and generally there is no capital gains tax payable on an inheritance.

1.2 Gift tax

CAT is also chargeable on gifts and is calculated in the same manner as that on inheritances and is payable by the beneficiary. However, in contrast to inheritances, gifts can also be liable to capital gains tax (CGT) and stamp duty.

1.3 Real estate transfer tax

Stamp duty is payable on the transfer of property including real estate, so a gift of real estate would be liable to stamp duty. The rate applicable is 2% on nonresidential property and 1% on residential property up to a value of €1 million, and 2% on the excess over this value. There is no stamp duty on an inheritance of real estate by a beneficiary.

1.4 Endowment tax

There is no endowment tax in Ireland.

1.5 Transfer duty

A gift of chargeable assets (generally most property that is not euro cash) is a disposal for CGT purposes. The tax is levied on the gain, which is the difference between the cost of acquiring and enhancing the asset (less any debt written off in respect of such costs) and the sale consideration (less expenses) on disposal. In the case of a gift, when the disposal is between connected parties or not for full consideration, the disposal is deemed to take place at market value. The gain is taxed at the current rate of 33% and the person liable is the disponer. When CGT and CAT arise on the same event (e.g., a gift), the beneficiary who pays the CAT can claim a credit of the CGT paid by the disponer as against his or her CAT.

A gift of property is also a transfer or conveyance of property that is liable to stamp duty. The duty is calculated on the market value of the property in the case of gifts. The rate of stamp duty is 1% on shares/stock and 2% on other property including nonresidential land (however, the rate on nonresidential property can be halved for transactions between connected parties when the property is farming land). For residential property, a rate of 1% applies to the value up to €1 million, and 2% on the value in excess of €1 million.

Stamp duty applies to an instrument of transfer of Irish property, or when the instrument transferring the property is executed in Ireland or relates to a matter or thing to be done in Ireland.

1.6 Net wealth tax

There is no net wealth tax in Ireland.

2. Who is liable?

CAT (inheritance and gift tax) is payable by the beneficiary who is the accountable person and liable for the tax. The disponer has the option to pay the tax under the legislation, which is treated as a further taxable benefit for the beneficiary and also liable to tax.

The principles of residence, ordinary residence and domicile, together with the situs of the property — the subject of the gift or inheritance — determine the liability to CAT.

2.1 Residency

Tax residence

An individual is considered a tax resident for a tax year if present in Ireland for:

A total of 183 days or more in the tax year or a total of 280 days or more in aggregate in the current tax year and the preceding year (this test only applies when an individual has spent more than 30 days in Ireland in each year).

From 1 January 2009, an individual is considered as present for a day if he or she is present in the country at any time during that day.

A "tax year" is the same as the calendar year.

Ordinarily resident

An individual becomes ordinarily tax resident in Ireland after being tax resident in Ireland for three consecutive tax years.

An individual who is ordinarily tax resident and who ceases to be tax resident in Ireland will be treated as continuing to be ordinarily tax resident for three tax years after the tax year of departure and can therefore remain taxable in Ireland.

2.2 Domicile

An individual is born with a domicile of origin, which is usually the domicile of his or her father. A person never loses their domicile of origin; however, he or she can acquire a domicile of choice that would then take precedence. A domicile of choice is where a person resides and where he or she intends to permanently reside. A domicile of choice can only be abandoned if a person intends to abandon it, and then either his or her domicile of origin applies or he or she acquires another domicile of choice.

2.3 Charge to CAT

With respect to gifts and inheritances received on or after 1 December 1999, a charge to CAT arises when:

- The disponer is resident or ordinarily resident in Ireland
- The beneficiary is resident or ordinarily resident in Ireland
- The gift or inheritance consists of Irish-situated property

If any one of these conditions is fulfilled, the gift or inheritance is within the charge to CAT.

From December 2004, if disponers or beneficiaries are non-Irish domiciled, they will not be treated as resident or ordinarily resident unless they have been a resident in Ireland for five consecutive years immediately preceding the year of the gift or inheritance and have also been a resident or ordinarily resident in that year.

For example, non-Irish domiciled individuals living in Ireland can gift non-Irish assets to beneficiaries outside of Ireland without a charge to gift tax, provided they have not been continuously residing in Ireland for the five years prior to the gift. Non-domiciled individuals may decide to break Irish residency every five years, so that the inheritance of their non-Irish estate does not fall within the charge to Irish CAT on their death.

Regarding gifts or inheritances received prior to 1 December 1999, a charge to CAT arises when either:

- The disponer was domiciled in Ireland on the date of the gift or the date of the inheritance

  or

- The gift or inheritance consisted of Irish-situated property

Specific rules apply to trusts and appointments from certain trusts settled prior to 1 December 1999 that remain chargeable under the pre-December 1999 charging provisions.

3. Rates

CAT is charged at 33% on the benefit, aggregated with certain prior benefits, and after deducting a threshold allocated to the beneficiary depending on his or her relationship with the disponer.

There are three tax-free threshold groups, and the table below shows the group threshold amounts applying to gifts and inheritances.

Group	Relationship to disponer	Group threshold from 14 October 2015
A	Applies when the beneficiary is a child (including adopted child, step-child, child of a civil partner and certain foster children) or minor child of a predeceased child or that predeceased child's civil partner. Parents also fall within this threshold when they take an inheritance of an absolute interest from a child.	€280,000
B	Applies when the beneficiary is a brother, sister, child of a brother or child of a sister, child of the civil partner of a brother or sister or lineal ancestor or lineal descendant of the disponer	€30,150
C	Applies in all other cases	€15,075

Any prior benefit (gift/inheritance) received since 5 December 1991 within the same group threshold is aggregated with the current benefit for the purposes of determining whether any tax is payable on the current benefit.

CAT is charged on the excess of the aggregate current and prior benefits after deducting the relevant threshold amount. The current rate is 33%.

For example, an individual who received a gift of €100,000 from his or her mother in the year 2000, and receives an inheritance from his or her father's estate of €750,000 in 2016, would have an aggregated taxable benefit on the inheritance of €850,000 taxed as follows:

Current inheritance	€750,000
Plus prior benefit in same group	€100,000
	€850,000
Less Group A threshold	€280,000
Taxable benefit	€570,000
Tax @ 33%	€188,100

If the gift in 2000 was from an uncle instead of being from the individual's mother, the prior benefit would not be aggregated with the current inheritance for the purposes of calculating the tax on the inheritance because the benefits are in different groups for CAT (the inheritance being in Group A and the prior benefit in Group B).

The tax on the inheritance would be:

Current inheritance	€750,000
Less threshold	€280,000
Taxable benefit	€470,000
Tax @ 33%	€155,100

4. Exemptions and reliefs

Exemptions

- A gift or inheritance received from a spouse or civil partner
- First €3,000 of all gifts taken from each disponer in any one calendar year
- An inheritance taken by a parent on the death of a child to whom either parent had made a taxable gift or inheritance in the previous five years
- A gift or inheritance for public or charitable purposes
- A gift or inheritance of a house the disponer owns when the beneficiary occupied the house as his or her main residence for three years prior to the disposition and continues to occupy it as his or her main residence for a further six years may be exempt
- Heritage property subject to conditions
- Government securities (subject to conditions) when the donee is neither domiciled nor resident in Ireland

Reliefs

- When a gift or inheritance consists of business property, the value of the business may be reduced by 90%, provided certain conditions are met, for the purposes of calculating the tax. Also, a nephew or niece who worked substantially in the business with the disponer can avail of the same thresholds as a child, i.e., Group A for the purposes of calculating the tax.
- When a gift or inheritance consists of agricultural property, the value of the agricultural property may be reduced by 90%, provided certain conditions are met, for the purposes of calculating the tax. The beneficiary must be a "farmer" to receive the relief, which requires that not less than 80% of the assets that the beneficiary owns, including the assets acquired in the benefit, are agricultural assets. In addition, the beneficiary must have certain farming qualifications and/or farm the land for six years, or lease the lands to a "farmer" who fulfills these conditions (i.e., has the necessary farming qualifications and/or farms the land). Also, a nephew or niece who worked substantially on the farm with the disponer can receive the same thresholds as a child (Group A) for the purposes of calculating the tax.
- When CGT and CAT arise on the same event, the CGT paid can be credited against the CAT liability arising, provided the property is not disposed of within two years, commencing on the date of the gift.

5. Filing procedures

The beneficiary is accountable for paying the CAT. When beneficiaries of an estate are non-Irish resident, the personal representative and/or solicitor acting in the estate can be held accountable.

The valuation date for a benefit determines when the CAT becomes payable. The valuation date for a gift is the date of gift. In the case of an inheritance, the valuation date depends on the circumstances, but is generally no earlier than the date of the grant of probate or administration, and in the case of a share of a residue, it is the date when it is possible to ascertain the value of the residue.

When the valuation date falls between 1 January and 31 August, CAT must be paid and a return filed by 31 October of the same year. When the valuation date falls between 1 September and 31 December, CAT must be paid and return filed by 31 October of the following year. Failure to deliver a return and discharge a CAT liability by the specified pay-and-file date will give rise to interest and a surcharge.

6. Assessments and valuations

CAT is a self-assessment tax, with the beneficiary having an obligation to file a return and pay the tax. However, the revenue commissioners have the power to raise assessments of CAT when a return has not been filed or when an assessment is incorrect or too little. The commissioners have a four-year time limit to issue a correcting or additional assessment from when they receive the return, as long as all the relevant information is provided.

The value of property for gift and inheritance tax purposes is the price the property would fetch if sold on the open market. Discounts can be applied in the case of quoted shares in public companies or minority shareholdings in private companies. However, discounts are not applicable when the beneficiary is "deemed" to have control over private companies. For the purposes of determining whether a beneficiary has "control" of the company, the shareholding and rights of the beneficiary in the company (including the inheritance/gift) together with the shareholding and rights of connected parties to the beneficiary are taken into consideration. For example, no minority discount would apply to the inheritance by a son of shares in the family company when immediate family members own the other shares.

A surcharge can be imposed when incorrect valuations are returned.

7. Trusts, foundations and private purpose fund

For Irish domiciled and resident individuals, trusts are used when there are minor or incapacitated beneficiaries or can be used as a long-term succession planning mechanism for future generations.

Transfers of property (not euro cash) into the trust can give rise to CGT and stamp duty, as they are treated as a disposal to a separate entity. Gift and inheritance tax arises when a beneficiary becomes beneficially entitled to a benefit from the trust. If this arises when the trust is created, or when assets are put into the trust, the arising CAT is then payable by the beneficiary. If it arises when assets are appointed out from the trust to a beneficiary, as in the case of a discretionary trust, the gift/inheritance does not arise until the date of appointment. However, this deferral of gift/inheritance tax in the case of a discretionary trust can be countered by discretionary trust tax that applies to those trusts.

Foundations do not form part of Irish law; instead, trusts or companies limited by guarantee are used, as are family partnerships.

Different types of trusts are:

Bare trusts

This type of trust is where one person holds a property as nominee for another. While the trustee only holds the legal interest, the beneficial interest in the property is owned by the other person.

Express trusts

In an express trust, instructions of exactly how and to whom distributions are to be made are clearly provided. For example, a life interest trust would include an individual who is entitled to income from the trust property for life, with a balance/capital being passed on to other named beneficiaries on his or her death.

Discretionary trusts

A discretionary trust is where trustees have the absolute discretion as to which class of beneficiaries or beneficiary to appoint the trust property to. The beneficiary of a discretionary trust only has the right to be considered favorably in the appointment of the property. Unless and until the trustees make an appointment out of the trust, no liability to gift or inheritance tax arises to the beneficiary.

Due to its flexibility, a discretionary trust is particularly useful when the beneficiaries are very young or incapable of managing their affairs. They can also be used for long-term succession planning.

That said, discretionary trusts are liable to discretionary trust tax. This tax arises when the settlor (i.e., individual who sets up the trust) is dead and all the principal objects are over 21 or not incapacitated. The principal objects of a discretionary trust for these purposes include the spouse or civil partner of the settlor, children under age 21 of the settlor, or his or her civil partner, or if these children are predeceased, their children and their civil partner’s children.

Discretionary trust tax is payable as a one-time initial charge of 6% on the value of the assets in the trust and thereafter as an annual charge of 1%. If all the assets of the trust are appointed out within five years, a refund of 3% of the initial charge is given.

Discretionary trust tax also applies to foundations that are similar to discretionary trusts.

8. Grants

There are no estate taxes in Ireland. Beneficiaries are taxed on gifts or inheritances.

9. Life insurance

Payments of life insurance policies are taxable on beneficiaries on the basis that they are a benefit to them and can be within the charge to CAT, and the beneficiary can be liable to this tax on the benefit received. Certain life insurance policies that are specifically taken out to pay gift or inheritance tax will be exempt from CAT when they are used for the purpose of paying that tax.

10. Law on succession

10.1 Estate planning

For Irish resident and Irish domiciliaries

Full use of reliefs and thresholds are important, as is ensuring that the conditions of significant reliefs, such as agricultural and business relief, are fully complied with so that the reliefs are available.

Dwelling house relief can be significant depending on the circumstances, because there is no limit to the value of the dwelling house that the relief applies to.

Increases in the value (for gift and inheritance tax purposes) of family businesses and investments may vary depending on the entity used to hold them.

Non-Irish domiciliaries

A non-Irish domiciled individual who becomes non-Irish resident for one year out of five can mean that a gift or inheritance of non-Irish property would not be liable to CAT.

10.2 Succession

The Succession Act 1965 governs the law of succession in Ireland. This Act provides the law applicable to wills, including what constitutes a valid will, as well as the rules of succession and intestacy.

Certain property of a testator may not pass under the terms of his or her will. This would include property that the testator jointly owns with another and/or others. Depending on the legal title, this property could pass by "survivorship" on death, i.e., automatically pass on to the surviving joint owner, which may not be under the terms of the will.

Assets held in trust would also pass under the terms of the trust and not under the terms of a will. This can apply also to life policies that pass under the terms of the policy and not under the terms of a will.

10.3 Forced heirship

Under the Succession Act 1965, a spouse or civil partner is entitled to a "legal right share" in the deceased's estate, which overrides the provisions of the will. When there are no children, the spouse or civil partner is entitled to one-half of the estate. When there are children, the spouse or civil partner is entitled to one-third of the estate.

Children do not have any automatic right, but they have a right to apply to the courts under the Succession Act 1965 for a share of the estate, when they believe that "proper provision" was not made by the deceased for them. The court will look at all factors before deciding whether "proper provision" was made, including the extent to which proper provision was made during the testator's lifetime and the financial situation of the testator and the child. The court has power to alter the terms of a will and make provision for a child from the estate, if it finds that the testator did not make the said "proper provision."

10.4 Matrimonial regimes and civil partnerships

There is no matrimonial regime in Ireland. However, spouses and civil partners get an automatic share of the estate of a deceased spouse or civil partner.

Civil partnerships became law in Ireland in 2010, and legislation has been amended to give civil partners similar rights as spouses. Tax legislation has been amended to reflect this, so civil partners get the same exemptions and reliefs afforded to spouses.

Same-sex marriage has been legal in Ireland since 16 November 2015.

10.5 Intestacy

When a deceased person fails to make a valid and effective will, the estate is distributed according to the rules on intestacy, as provided for in the Succession Act 1965.

These rules determine how the estate is distributed based on the degree of relationship of surviving relatives to the testator, as shown in the table below:

Surviving close relatives	Share in estate
Spouse or civil partner and no children	Spouse or civil partner inherits all of estate
Spouse/civil partner and children	Spouse/civil partner two-thirds, children one-third (and special provisions for children of deceased children)
No spouse/civil partner or children	Parents inherit entire estate
No spouse/civil partner, children or parents	Surviving brothers and sisters in equal shares with children of predeceased brothers and sisters taking their parents share equally

The rules continue to divide assets among more distant relatives, with the State as the ultimate successor.

10.6 Probate

Before the assets of an estate in Ireland can be administered, an application must be made to the probate office, a division of the High Court, for a grant of probate in the case of a valid will, and a grant of administration in the case of an intestacy. The process of the application and who is entitled to apply is governed by the Succession Act 1965. The grants give to the personal representatives the power to administer the estate of the deceased and deal with the assets.

11. Estate tax treaties

11.1 Unilateral rules

Unilateral rules apply to allow for a credit for foreign tax on a gift or inheritance as against the Irish CAT liability when the taxes arise on the same event, and when double-tax treaties do not provide for a relief.

11.2 Double-taxation treaties

Ireland has two double-tax treaties in place that provide for relief for the double taxation of gifts and inheritances. One treaty is with the US and only covers inheritance taxes and not gift tax. The second treaty is with the UK.