Ireland

Contacts

Limerick

Barrington House Barrington Street Limerick Ireland	**John Heffernan** john.heffernan@ie.ey.com +353 61 449904

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 who takes an inheritance that falls within the charge to CAT. An inheritance falls within the charge to CAT if either the disponer or the beneficiary is Irish tax resident or ordinarily resident, or the property comprised within the inheritance is situated in Ireland. The beneficiary is accountable for the tax liability and tax return filing obligations.

Stamp duty and capital gains tax should not arise on an inheritance.

1.2 Gift tax

CAT is also chargeable on gifts and is calculated in the same manner as inheritances. The beneficiary is accountable for the tax liability and tax return filing obligations. The first €3,000 of the total taxable value of all taxable gifts taken by a beneficiary from the same disponer in any year is exempt from CAT. 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. Therefore, a gift of real estate property 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 taken 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 non-euro cash) to a connected party 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 market value (less expenses) on the date of disposal. The gain is taxed at 33%. The disponer of the asset is the person accountable to pay the CGT liability and file a return. When CGT and CAT arise on the same property and on the same event, the beneficiary can claim a credit in respect of the CGT paid against his or her CAT liability. When CGT/CAT credit relief is claimed, the beneficiary cannot dispose of the asset for two years, or else the relief would be withdrawn.

If an instrument is executed to give legal effect to the gift, a charge to stamp duty would arise if the instrument transfers Irish situs property, it is executed in Ireland or otherwise relates to a matter or thing done or to be done in Ireland. Stamp duty is calculated on the market value of the property on the date of the gift. Stamp duty is charged at 1% on shares and marketable securities and 2% on other property types, including nonresidential real estate property. Residential real estate property is liable to stamp duty at 1% up to the first €1 million and 2% on the excess market value.

1.6 Net wealth tax

There is no net wealth tax in Ireland.

2. Who is liable?

- Inheritance tax: The beneficiary (i.e., the person who takes the inheritance)
- Gift tax: The beneficiary (i.e., the person who takes the gift)
- CGT: The disponer (i.e., the person transferring the property by gift)
- Stamp duty: The beneficiary (i.e., the person who takes the gift)

The tax residence, ordinary residence and domicile of both the disponer and beneficiary, as well as the situs of the property comprised within the gift or inheritance, determines the charge to CAT.

The tax residence, ordinary residence and domicile of the disponer, as well as whether the property comprised within the gift or inheritance constitutes a specified asset, determines the charge to CGT.

Only certain instruments that are either executed in Ireland or otherwise relate to Irish situs property, or relate to a matter or thing done or to be done in Ireland, come within the charge to stamp duty.

2.1 Residency

Tax residence

An individual is Irish tax resident for a year if present in Ireland for a total of 183 days or more in the year under review, or 280 days or more in aggregate in the year under review and the preceding year. This test does not apply when an individual was present in Ireland for 30 days or less in a year. That person will not be treated as resident for that year unless he or she elects to be resident. 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 Irish tax resident from the commencement of the fourth tax year after being Irish tax resident for three consecutive tax years.

An individual who is ordinarily Irish tax resident will not cease to be ordinarily Irish tax resident until he or she has been non-Irish tax resident for three consecutive tax years.

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 his or her domicile of origin; however, he or she can acquire a domicile of choice that takes precedence. Acquiring a domicile of choice requires "a final and deliberate intention." In practice, this means severing almost all connections with the country of origin and establishing a permanent relationship in the country of choice. If the individual abandons his or her domicile of choice, then he or she reverts back to his or her domicile of origin unless and until he or she acquires a new 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, a disponer or beneficiary who is non-Irish domiciled will not be treated as Irish resident or ordinarily resident unless they have been resident in Ireland for five consecutive years immediately preceding the year of the gift or inheritance and have also been Irish resident or ordinarily resident in that year.

For example, non-Irish domiciled individuals living in Ireland can gift non-Irish assets to non-Irish resident beneficiaries without a charge to gift tax, provided they have not been continuously resident 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 by non-Irish resident beneficiaries does not fall within the charge to Irish CAT on their death.

With respect to 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 disposition under which the gift or inheritance was taken.

  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 on the value of the inheritance or gift (collectively the "benefit") that exceeds a tax-free threshold amount. The tax-free threshold amount is divided into three tax-free groups. The applicable group depends on the relationship between the disponer and the beneficiary. In determining the amount of the tax-free threshold available, prior gifts and inheritances received since 5 December 1991 from disponers within the same group are aggregated with the current gift or inheritance. The aggregate determines the available tax-free threshold amount (if any). The excess benefit received above the available tax-free threshold amount is subject to CAT, currently charged at 33%.

The table below shows the three tax-free group threshold amounts.

Group	Relationship to disponer	Group threshold from 12 October 2016
A	Applies when the beneficiary is a child (including adopted child, stepchild, 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.	€310,000
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	€32,500
C	Applies in all other cases	€16,250

For example, an individual who received a prior gift of €100,000 from his or her mother in the year 2014, and receives an inheritance from his or her father's estate of €750,000 in 2017, would have a Group A tax-free threshold of €213,000 available to reduce the taxable value of his or her inheritance liable to CAT. The annual small gift exemption of €3,000 reduces the taxable value of the prior gift of €100,000 to €97,000. The 2017 inheritance would be taxed as follows:

2017 inheritance	€750,000
2017 Group A	€310,000
Less prior taxable gift	(€97,000)
Available Group A threshold	€213,000
Current inheritance	€750,000
Less available threshold	(€213,000)
Taxable excess	€537,000
CAT charged at 33%	€177,210

If the 2014 gift was from an uncle instead of the individual's mother, then the prior gift would be a Group B prior gift and, therefore, would not be aggregated with the current inheritance for the purposes of calculating the CAT liability on the inheritance.

The tax on the 2017 inheritance would be:

2017 inheritance	€750,000
Available Group A threshold	€310,000
Taxable excess	€440,000
CAT charged at 33%	€145,200

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
- An inheritance of a dwelling house that the disponer had occupied as his or her main residence at the date of his or her death, but only if the beneficiary also occupied the dwelling house as his or her main residence continuously for three years prior to the inheritance, does not have an interest in any other dwelling house on the date of the inheritance and also continues to own and occupy the dwelling house as his or her main residence for a further six years
- Maintenance payments to minor children or children up to the age of 25 years in full-time education for support, maintenance or education
- 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 of a family-owned business, subject to meeting certain qualifying conditions, the value of the business may be reduced by 90% for the purposes of calculating the tax liability. Clawback conditions apply. A nephew or niece who worked substantially in the family business with the disponer over a period of five years may, subject to meeting certain qualifying conditions, avail of the Group A tax-free threshold in respect of the business assets for the purposes of calculating his or her tax liability.
- When a gift or inheritance consists of agricultural property, subject to meeting certain qualifying conditions, the value of the agricultural property may be reduced by 90% for the purpose of calculating the tax liability. To qualify, the beneficiary must be an "active farmer." That is, at the time of taking the gift or inheritance of agricultural property, not less than 80% of the beneficiary's assets must consist of agricultural assets, and the beneficiary must actively farm the agricultural property. That is, the beneficiary must have certain farming qualifications and farm the lands on a commercial basis for a period of at least six years or spend at least 50% of his or her normal working hours farming the lands on a commercial basis for a period of at least six years, or otherwise lease the lands to a farmer who satisfies these conditions. Clawback conditions apply. A nephew or niece who worked substantially on the family farm with the disponer over a period of five years may, subject to meeting certain qualifying conditions, avail of the Group A tax-free threshold in respect of the agricultural assets for the purposes of calculating his or her tax liability.
- When CGT and CAT arise on the same property on the same event, the CGT paid can be credited against the CAT liability. The beneficiary must not dispose of the property for a period of two years commencing on the date of the gift or else a clawback of the relief would arise.

5. Filing procedures

The beneficiary is accountable to pay the CAT liability and file a return. When beneficiaries of an estate are non-Irish resident, the personal representative and/or solicitor acting in the estate are also accountable to pay and file.

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 intestate. In the case of a share of a residue, it is the date when it is possible to ascertain the value of the net residue available for distribution. When property passes by survivorship, the valuation date is the date of the disponer's death.

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 a 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. That is, the beneficiary must calculate and pay the liability and also file a return. The revenue commissioners can raise assessments when a return has not been filed or the return is incorrect. The commissioners have a four-year time limit to issue a correcting or additional assessment from when they receive the return. This time limit does not apply in the case of fraud or neglect. CAT is calculated on the market value of the property comprised within the gift or inheritance. That is, the price the property would fetch if sold on the open market. Discounts can be applied in the case of minority shareholdings in private companies. Discounts do not apply when a beneficiary is "deemed" to have control of a private family-controlled company. A surcharge will be imposed in the case of a substantial undervaluation.

7. Trusts, foundations and private purpose funds

Trust structures can be used to protect assets and pass wealth to the next generation. Trusts are often used in conjunction with other legal structures, such as companies or partnerships, as property investment vehicles.

The settlement of property on trust, the administration of the trust property during the life of the trust, the appointment out of trust property and the winding-up of the trust will all have myriad tax implications, including capital acquisitions tax, CGT, discretionary trust tax (DTT), stamp duty and income tax. Special anti-avoidance tax rules apply in the case of trusts settled for minor children in the lifetime of the settlor.

Bare, fixed and discretionary trusts are the main types of trusts to consider for tax purposes.

Bare trusts

A bare trust is akin to a nomineeship, when for legal reasons or convenience, assets are held by persons who do not own those assets beneficially.

Limited interest trusts

A limited interest trust is a settlement in which the beneficial interest taken by a beneficiary is not absolute and is limited by either time or by a condition. An example is a trust for a person for life or until he or she reaches a certain age or for a particular number of years.

In the case of a life interest trust, the life tenant is entitled to the income from the trust for the duration of his or her life, and on his or her death the absolute interest in the property passes to the remainderman.

Discretionary trusts

Under a discretionary trust, assets are given to trustees to hold on trust to apply the income or capital, or both, for the benefit of a class of beneficiaries who are listed in the trust deed in such proportions as the trustees, by exercising their absolute discretion, decide. The trustees have an absolute discretion as to which beneficiary or beneficiaries from a class of beneficiaries will benefit from the trust property, as well as when and to what extent. A beneficiary of a discretionary trust has no right to any of the trust assets, and a beneficiary will not receive any trust assets unless and until the trustees exercise their discretion in favor of that beneficiary.

A discretionary trust structure should allow trustees sufficient flexibility to manage the trust assets and use their discretion and expertise to make provisions for the beneficiaries in the best way possible, taking into account the legal and tax implications and ensuring the passing of assets in an orderly manner while also avoiding dissipation of trust assets. A discretionary trust is generally the vehicle of choice to protect minor and incapacitated children.

In addition to having other tax implications, discretionary trusts are also liable to DTT. This tax arises when the settlor (i.e., the individual who sets up the trust and settles assets on trust) has died and all of the principal objects are over 21 years of age. The principal objects of a discretionary trust for these purposes include the spouse or civil partner of the settlor, the children of the settlor, or his or her civil partner, or, if these children are predeceased, their children and their civil partner’s children.

DTT 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 trusts are exempt from DTT if they are created exclusively for:

- Purposes that, in accordance with the laws of Ireland, are public or charitable
- The purpose of a superannuation or unit trust scheme
- The benefit of improvident or incapacitated individuals
- The upkeep of heritage houses or gardens

DTT also applies to foundations that are similar to discretionary trusts.

Foundations

Setting up a foundation is usually the best option for those seeking maximum flexibility and control over their philanthropic investment, for those wishing to involve their family and future generations in giving and for businesses wanting to adopt a more structured and strategic approach to giving. The majority of philanthropic organizations in Ireland are established either as a charitable trust or as a company limited by guarantee and not having a share capital.

Tax exemptions may apply to foundations established exclusively for a charitable purpose.

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 take a benefit where insufficient or no consideration was provided. These benefits may come within the charge to CAT. Certain life insurance policies that are specifically taken out to pay gift or inheritance tax and/or approved retirement fund 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.

Using the annual small gift exemption can pass significant wealth over a period.

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 testator's will. When there are no children, the spouse or civil partner is entitled to one-half of the estate. When the testator has children, then the spouse or civil partner is entitled to one-third of the estate. If the testator has made no provision in his or her will for his or her spouse, then this entitlement is automatic.

Children do not have any automatic entitlement, but they have a right to apply to court under the Succession Act 1965 for a share of the estate when they believe that "proper provision" was not made under the terms of the deceased parent's will. 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 onus of proof is on the child making the claim to prove a positive failure in the moral duty of the deceased parent. The court has power to alter the terms of a will and make provision for a child from the estate. However, the court order cannot affect the legal right share of the surviving spouse.

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 with effect from 1 January 2011. The legislation gives registered civil partners similar legal rights as spouses. Tax legislation has been amended to reflect this, so registered 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 or civil partner and children	Spouse or civil partner two-thirds, children one-third (and special provisions for children of deceased children)
No spouse or civil partner or children	Parents inherit entire estate
No spouse or 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 or a grant of administration intestate 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 grant gives the personal representatives the power to administer the estate of the deceased and deal with the assets of the estate.

11. Estate tax treaties

11.1 Unilateral rules

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

11.2 Double-taxation treaties

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