Ireland

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 (see paragraph 2 below). The beneficiary is accountable for the tax liability and tax return filing obligations.

The vesting of an inheritance in a beneficiary on the death of the testator would not give rise to either stamp duty or capital gains tax (CGT) charges.

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1.2 Gift tax

CAT is also chargeable on gifts. The scoping rules are the same manner as the rules applying to inheritances, i.e., the residence of the disponer/beneficiary and the situs of the property comprised within the gift (see paragraph 2 below). The beneficiary is accountable for the tax liability and tax return filing obligations. The first EUR3,000 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. In the case of a gift, stamp duty is charged on the market value of the property. Stamp duty on nonresidential property is charged at 7.5% and on residential property charged at 1% on values up to EUR1 million and 2% on the excess over this value. Generally, stamp duty should not arise where property is transferred under an inheritance, unless potentially where a family arrangement rearranges the distribution.

1.4 Endowment tax

There is no endowment tax in Ireland.

1.5 Transfer duty

A gift of chargeable assets is a disposal for CGT purposes. CGT 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 on the date of disposal. The gain is taxed at 33%. The transferor 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 may be entitled to 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 the relief would be withdrawn.

In the case of a gift, a charge to stamp duty may arise if the instrument is executed in Ireland or wherever executed relates to Irish *situs* property, or 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 (other than shares deriving the greater part of their value from Irish nonresidential real estate property (> 50% on a gross value basis), which may be charged at 7.5%, if the transfer results in a change in control of the underlying real estate property and that property was held either as trading stock or held with the object of either realizing a gain from its disposal or realizing a gain when developed). Residential real estate property is liable to stamp duty at 1% up to the first EUR1 million and 2% on the excess market value. Nonresidential property is liable to stamp duty at 7.5% on the market value of the property.

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 transferor (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, and also 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, and also whether the property 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. Anti-avoidance provisions may also apply to bring an instrument within the charge to stamp duty.

2.1 Irish tax resident

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 where an individual was present in Ireland for 30 days or less in a year. 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 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 and abandon his/her domicile of origin. 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

Falling within any one of the above brings the gift or inheritance within the charge to CAT.

A disponer or beneficiary who is non-Irish domiciled will not be treated as Irish resident or ordinarily resident for CAT purposes unless he or she has been resident in Ireland for five consecutive years immediately preceding the year of the gift or inheritance and is also either Irish resident or ordinarily resident in that year.

This means that a non-Irish-domiciled individual living in Ireland, but who has not been resident in Ireland for five consecutive years, could gift non-Irish assets to non-Irish resident and non-ordinarily resident beneficiary without a charge to gift tax arising.

3. Rates

CAT is charged on the value of the inheritance or gift (collectively, the "benefit") that exceeds the available tax-free threshold amount. The tax-free threshold amount is divided into three groups. The applicable group depends on the relationship between the disponer and the beneficiary. Prior gifts and inheritances received since 5 December 1991 from disponers within the same group are aggregated with the current gift or inheritance to determine the available tax-free threshold amount. The excess benefit received above this amount is subject to CAT at the applicable rate (determined by the date of the gift/inheritance). CAT is currently charged at 33%.

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

Group	Relationship to disponer	Group threshold from 9 October 2019 (EUR)
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.	335,000
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 EUR100,000 from his or her mother in the year 2014, and receives an inheritance from his or her father's estate of EUR750,000 in 2021, would have a Group A tax-free threshold of EUR238,000 available to reduce the taxable value of his or her inheritance liable to CAT (i.e., EUR335,000 less EUR97,000). The annual small gift exemption of EUR3,000 reduces the taxable value of the prior gift of EUR100,000 to EUR97,000 (i.e., EUR100,000 less EUR3,000). The 2021 inheritance would be taxed as follows (EUR):

2021 inheritance	750,000
2021 Group A	335,000
Less prior taxable gift	(97,000)
Available Group A threshold	238,000
Current inheritance	750,000
Less available threshold	(238,000)
Taxable excess	512,000
CAT charged at 33%	168,960

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 2021 inheritance would then be (EUR):

2021 inheritance	750,000
Available Group A threshold	335,000
Taxable excess	415,000
CAT charged at 33%	136,950

4. Exemptions and reliefs

Exemptions

- A gift or inheritance received from a spouse or civil partner
- First EUR3,000 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 may qualify for exemption subject to meeting certain qualifying criteria. The exemption is subject to clawback if certain conditions are not satisfied. A gift or inheritance of a dwelling-house taken by a dependent relative who is permanently and totally incapacitated due to mental or physical infirmity may qualify for exemption.
- Payments made for the support, maintenance or education of a minor child, or a child who is more than 18 years of age but not more than 25 years of age and who is receiving full-time education or instruction at any university, college, school or other educational establishment, or regardless of age to a child who is permanently incapacitated by reason of physical or mental infirmity from maintaining himself or herself, is exempt from CAT where the benefit is such as would constitute part of the normal expenditure of a person in the circumstances of the disponer and also reasonable having regard to the financial circumstances of the disponer.
- Gifts or inheritances taken exclusively for the purposes of discharging certain medical and related expenses, including the cost of maintenance in connection with such medical care of an individual who is permanently incapacitated by reason of physical or mental infirmity. For the exemption to apply, there must be evidence from the disponer that he or she has provided the benefit exclusively for these purposes.
- 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, qualify for 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. 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, qualify for 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 otherwise 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 administration of the estate are also accountable to pay and file.

The CAT return filing and payment date is fixed by the valuation date. In the case of a gift, the general rule is that the date of the gift is the valuation date. In the case of an inheritance, the valuation date is typically the date of the grant (i.e., probate where a person dies leaving a valid will, or administration intestate where a person dies without leaving a valid will). Where the inheritance is a share of the residue of the net estate, then generally the valuation date is the date of ascertainment of the residue available for distribution. Where the beneficiary takes immediate possession of an asset, or already has possession, the valuation date may be the date of death.

When the valuation date falls between 1 January and 31 August, then the CAT liability must be paid and a CAT return filed by 31 October of the same year. When the valuation date falls between 1 September and 31 December, the CAT liability must be paid and a CAT return filed by 31 October of the following year. Failure to deliver a CAT return and discharge the CAT liability by the specified pay-and-file date will give rise to interest and a late filing 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 Revenue 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/inheritance as at the valuation date. A surcharge may be imposed in the case of 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 upon trust, the administration of the trust property during the life of the trust, the appointment of property out of trust 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. In addition, special anti-avoidance tax rules may 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 provision 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 discretionary trust tax (DTT). DTT 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. For DTT, the principal objects comprise 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 held upon trust as of the date the trust becomes a chargeable discretionary trust, and thereafter as an annual charge of 1% levied on the value of the assets held upon trust on 31 December in each year (but not within 12 months of the initial charge). If all the assets of the trust are appointed out within five years of the trust becoming a chargeable discretionary trust, then a refund of 50% of the initial charge can be claimed. That is, the initial charge is recomputed at 3% rather than 6%.

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. Ireland has not legislated to recognize foundations, unlike many civil law and offshore jurisdictions. 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.

Generally, foreign foundations are taxed by the Revenue Commissioners as discretionary trusts.

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

Charites

A charity must register with the Charity Regulatory Authority to obtain charitable status and separately with the Revenue Commissioners to obtain a charitable tax-exempt status.

On an ongoing basis, the charity may be exempt from income tax or CGT on its earnings, provided certain conditions are met. Following receipt of a charitable tax exemption, after two years the charity may apply for authorization as an eligible charity, which gives corporate donors and the charity itself favorable tax treatment in relation to donated sums.

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

To reduce exposure to CAT full use of reliefs and thresholds, as well as ensuring that the conditions of significant reliefs, such as agricultural relief and business relief, are fully satisfied should be the primary focus of any estate plan. For example, the annual “small gift exemption” allows the gifting of EUR3,000 to another person in a calendar year without paying CAT or eroding tax-free thresholds. This means that parents can gift EUR6,000 annually to a child (EUR3,000 from each parent) which sum can accumulate significantly over a beneficiary’s lifetime. A testator can also leave assets upon trust, which can postpone a liability to CAT.

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 may not be liable to CAT.

10.2 Succession

The Succession Act 1965 (the "Act") governs the law of succession in Ireland with respect to the distribution of a deceased's estate.

An individual's estate consists of all the assets the individual owns at the time of death. These assets will be distributed in accordance with the person's will, trust or intestacy laws. All property held by a nominee of which the deceased is the beneficial owner will form part of his/her estate. All interests held by a deceased by way of tenancy-in-common will also form part of the individual's estate. Assets include property, investments, pensions, cash and cash equivalents.

Certain property may not pass into a deceased's estate; for example, property held under a "joint tenancy" passes on death to the surviving joint tenants according to the rules of survivorship, assets passing by nomination, death benefits passing under a life insurance policy or pension scheme, or assets passing in which the deceased had an interest for his/her life.

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. Where the testator had no children, the spouse or civil partner is entitled to one-half of the estate. Where the testator had children, then the spouse or civil partner is entitled to one-third of the estate. If the testator had made no provision in his or her will for his or her spouse, then this entitlement to a legal right share is automatic. Where provision has been made for the spouse under the will, the spouse may elect to take the legal right share instead.

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/community property 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 ensure civil partners are afforded the same exemptions and reliefs as 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 parent's 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 (i.e., where the testator failed to make a valid will). 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

If a deceased person held foreign assets at the date of death, a charge to tax may arise in that foreign jurisdiction and also in Ireland. To mitigate double taxation arising, Ireland has entered into double-taxation agreements with the United Kingdom and the United States. Unilateral relief is also available under domestic legislation.

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

The Ireland/UK treaty applies to both gifts and inheritances. Under the provisions of the treaty, each Contracting State retains the right to tax property situated in that country and double-taxation relief is then provided by the granting of a credit. Where the doubly taxed property is located in either Ireland or the UK, then the country where the doubly taxed property is not situated gives a credit for the tax paid in the country where the property is situated. Where the doubly taxed property is not located in either Ireland or the UK, credit is given by the State that has the "subsidiary taxing rights." A credit is only given where the same property is taxed on the same event in both Ireland and the UK, and the same individual must bear the burden of tax in both countries.

The Ireland/US treaty applies only to Irish inheritance tax and US federal estate tax arising on death. It does not extend to gifts or to separate US state death taxes imposed by individual US states on their residents. Relief from double taxation that arises in these circumstances should be claimed under the unilateral provisions. Treaty relief operates either as an exemption in certain cases or otherwise credit relief may apply.