

Gift deemed to be taken. CATA 1976 s5: FA 1993 s121(1) (part); FA 1994 s147 (part) 5.—(1) For the purposes of this Act, a person is deemed to take a gift, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money's worth paid by such person.

(2) A gift is deemed—

(a) to consist of the whole or the appropriate part, as the case may be, of the property in which the donee takes a benefit, or on which the benefit is charged or secured or on which the donee is entitled to have it charged or secured, and

(b) if the benefit is an annuity or other periodic payment which is not charged on or secured by any property and which the donee is not entitled to have so charged or secured, to consist of such sum as would, if invested on the date of the gift in the security of the Government which was issued last before that date for subscription in the State and is redeemable not less than 10 years after the date of issue, yield, on the basis of the current yield on the security, an annual income equivalent to the annual value of the annuity or of the other periodic payment receivable by the donee.

(3) For the purposes of section 6 (1)(c) and 6(2)(d), the sum referred to in subsection (2)(b) is deemed not to be situate in the State at the date of the gift.

(4) Where a person makes a disposition under which a relative of the person becomes beneficially entitled in possession to any benefit, the creation or disposition in favour of the person of an annuity or other interest limited to cease on the death, or at a time ascertainable only by reference to the death, of the person, shall not be treated for the purposes of this section as consideration for the grant of such benefit or of any part of such benefit.

(5) For the purposes of this Act, “appropriate part”, in relation to property referred to in subsection (2), means that part of the entire property in which the benefit subsists, or on which the benefit is charged or secured, or on which the donee is entitled to have it so charged or secured, which bears the same proportion to the entire property as the gross annual value of the benefit bears to the gross annual value of the entire property, and the gift shall be deemed to consist of the appropriate part of each and every item of property comprised in the entire property.

(6) (a) Where a contract or agreement was entered into, under or as a consequence of which a person acquired the right, otherwise than for full consideration in money or money's worth, to have a benefit transferred to that person, or to another in that person's right or on that person's behalf, and an act or acts is or are done, on or after that date, in pursuance of, or in performance or satisfaction, whether in whole or in part, of such contract or agreement, then the gift or inheritance, as the case may be, taken by or in right or on behalf of that person, is deemed to have been taken, not when the right was acquired, but either—

(i) when the benefit was transferred to that person or to another in that person's right or on that person's behalf, or

(ii) when that person or another in that person's right or on that person's behalf became beneficially entitled in possession to the benefit,

whichever is the later.

(b) In this subsection, a reference to a contract or agreement does not include a reference to a contract or agreement—

(i) which is a complete grant, transfer, assignment or conveyance, or

(ii) which was enforceable by action.

(7) (a) In paragraph (b), the expression “shares in a private company” shall be construed by reference to the meanings that “share” and “private company” have, respectively, in section 27.

(b) Where a person becomes beneficially entitled in possession to a benefit, and the property in which the benefit is taken consists wholly or partly of shares in a private company and where the consideration referred to in subsection (1), being consideration in relation to a disposition, could not reasonably be regarded (taking into account the disponent's position prior to the disposition) as representing full consideration to the disponent for having made such a disposition, subsection (1) is deemed to apply as if “otherwise than for full consideration in money or money's worth paid by such person” were deleted in that subsection.