

Taxable value of a taxable gift or inheritance. CATA 1976 s18 28.—(1) In this section, “incumbrance-free value”, in relation to a taxable gift or a taxable inheritance, means the market value at the valuation date of the property of which the taxable gift or taxable inheritance consists at that date, after deducting any liabilities, costs and expenses that are properly payable out of the taxable gift or taxable inheritance.

(2) Subject to this section ), the taxable value of a taxable gift or a taxable inheritance (where the interest taken by the donee or successor is not a limited interest) is ascertained by deducting from the incumbrance-free value of such a taxable gift or a taxable inheritance the market value of any bona fide consideration in money or money's worth, paid by the donee or successor for the gift or inheritance, including—

(a) any liability of the disponent which the donee or successor undertakes to discharge as that disponent's own personal liability, and

(b) any other liability to which the gift or inheritance is subject under the terms of the disposition under which it is taken,

and the amount so ascertained is the taxable value, but no deduction shall be made under this subsection in respect of any liability which is to be deducted in ascertaining the incumbrance-free value.

(3) Where a liability (other than a liability within the meaning of subsection (9)) for which a deduction may be made under subsection (1) or (2) is to be discharged after the time when it is to be taken into account as a deduction under either of those subsections, it is valued for the purpose of making such a deduction at its current market value at the time when it is to be so taken into account.

(4) The taxable value of a taxable gift or a taxable inheritance, where the interest taken by the donee or the successor is a limited interest, is ascertained as follows—

(a) the value of the limited interest in a capital sum equal to the incumbrance-free value is ascertained in accordance with the Rules contained in Schedule 1, and

(b) from the value ascertained in accordance with paragraph (a) a deduction is made in respect of the market value of any bona fide consideration in money or money's worth paid by the donee or the successor for the gift or the inheritance and the amount remaining after such deduction is the taxable value, but no deduction is made under this paragraph in respect of any liability which is to be deducted in ascertaining the incumbrance-free value.

(5) A deduction shall not be made under this section—

(a) in respect of any liability the payment of which is contingent on the happening of some future event, but if the event on the happening of which the liability is contingent happens and the liability is paid, then, on a claim for relief being made to the Commissioners and subject to the other provisions of this section, a deduction is made in respect of the liability and such adjustment of tax as is appropriate is

made; and such adjustment is made on the basis that the donee or successor had taken an interest in possession in the amount which is to be deducted for the liability, for a period certain which was equal to the actual duration of the postponement of the payment of the liability,

(b) in respect of any liability, costs or expenses in so far as the donee or successor has a right of reimbursement from any source, unless such reimbursement can not be obtained,

(c) in respect of any liability created by the donee or successor or any person claiming in right of the donee or successor or on that donee or successor's behalf,

(d) in respect of tax, interest or penalties chargeable under this Act in respect of the gift or inheritance, or of the costs, expenses or interest incurred in raising or paying the same,

(e) in respect of any liability in so far as such liability is an incumbrance on, or was created or incurred in acquiring, any property which is comprised in any gift or inheritance and which is exempt from tax under any provision of this Act or otherwise,

(f) in the case of any gift or inheritance referred to in section 6 (1)(c), 6 (2)(d), 11 (1)(b) or 11 (2)(c) in respect of—

(i) any liability, costs or expenses due to a person resident outside the State (except in so far as such liability is required by contract to be paid in the State or is charged on the property which is situate in the State and which is comprised in the gift or inheritance), or

(ii) any liability, costs or expenses in so far as the same are charged on or secured by property which is comprised in the gift or inheritance and which is not situate in the State,

except to the extent that all the property situate outside the State and comprised in the gift or inheritance is insufficient for the payment of the liability, costs or expenses,

(g) for any tax in respect of which a credit is allowed under section 106 or 107.

(6) In the case of a gift or inheritance referred to in subsection (5)(f), any deduction to be made under subsection (2) or (4)(b) is restricted to the proportion of the consideration which bears the same proportion to the whole of the consideration as the taxable gift or taxable inheritance bears to the whole of the gift or the whole of the inheritance.

(7) A deduction shall not be made under this section—

(a) more than once for the same liability, costs, expenses or consideration, in respect of all gifts and inheritances taken by the donee or successor from the disponent, or

(b) for any liability, costs, expenses or consideration, a proportion of which is to be allowed under section 89 (2)(ii) or (iii) in respect of a gift or inheritance taken by the donee or successor from the disponent.

(8) Where a taxable gift or a taxable inheritance is subject to a liability within the meaning of subsection (9), the deduction to be made in respect of that liability under this section shall be an amount equal to the market value of the whole or the appropriate part, as the case may be, of the property, within the meaning of section 5 (5).

(9) For the purpose of subsection (8), "liability", in relation to a taxable gift or a taxable inheritance, means a liability which deprives the donee or successor, whether permanently or temporarily, of the use, enjoyment or income in whole or in part of the property, or of any part of the property, of which the taxable gift or taxable inheritance consists.

(10) Where—

(a) bona fide consideration in money or money's worth has been paid by a person for the granting to that person, by a disposition, of an interest in expectancy in property, and

(b) at the coming into possession of the interest in expectancy, that person takes a gift or an inheritance of that property under that disposition,

the deduction to be made under subsection (2) or (4)(b) for consideration paid by that person is a sum equal to the same proportion of the taxable value of the taxable gift or taxable inheritance (as if no deduction had been made for such consideration) as the amount of the consideration so paid bore to the market value of the interest in expectancy at the date of the payment of the consideration.

(11) Any deduction, under this section, in respect of a liability which is an incumbrance on any property, is, so far as possible, made against that property.