Capital Acquisitions Tax Considerations In Making Provision For Relatives

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As readers will be aware, Finance Act 2014 (FA 2014) introduced significant restrictions to the exemption from capital acquisitions tax (CAT) set out in s82(2) of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003).

Exemptions in s82(2) and s82(4) CATCA 2003

In brief, before the passing of FA 2014, s82(2) CATCA 2003 provided that receipts in the lifetime of a disponer (a person making a gift or inheritance) by certain relatives of such disponer (the spouse, civil partner, child or child of a civil partner), and also persons in respect of whom such disponer was *in loco parentis*, of money or money's worth (hereafter "payment(s)") would not be considered gifts or inheritances for CAT purposes and would therefore be exempt from the charge to CAT. This exemption was available only where the relevant payment was made for the maintenance, education or support of the recipient.

Section 82(2) CATCA 2003 extended the exemption to payments to a disponer's dependent relatives[1] under s466 of the Taxes Consolidation Act 1997 (TCA 1997) for support or maintenance, and s82(4) CATCA 2003 provided a similar exemption where the payments were made from the disponer's estate to a minor child of the disponer or of the disponer's civil partner after the death of the disponer.

In any claim for an exemption under s82(2) or s82(4), the legislation provided that it was necessary that the provision of the support, maintenance or education:

› would be considered to be part of the "normal expenditure of a person in the circumstances of the disponer" (or in the case

1 Generally, a relative of the disponer, or of the disponer's spouse/civil partner, incapacitated by old age or infirmity from maintaining himself or herself; or the widowed father or widowed mother of the disponer or of the disponer's spouse/civil partner, whether incapacitated or not; or a child of the disponer or of the disponer's civil partner who lives with the disponer and on whose services the disponer, because of old age or incapacity, is compelled to depend.

of a claim under s82(4), in the circumstances of the disponer immediately before his or her the death); and

› was "reasonable having regard to the financial circumstances of the disponer" (or in the case of s82(4), the financial circumstances of the disponer immediately before his or her death).

The restrictions to the provisions of s82(2) CATCA 2003 introduced by FA 2014 and in effect from 1 January 2015 retain the tests above but limit the exemption so that payments for maintenance, education or support will fall within the exemption from CAT only where they are made to:

› a minor child of the disponer or of the disponer's civil partner;

› a child of the disponer or of the disponer's civil partner aged between 18 and 25 years where that child is in full-time education (which limitation was also introduced in respect of the provisions of s82(4));

› a child of the disponer or of the disponer's civil partner of any age where that child is permanently incapacitated due to either mental or physical infirmity from maintaining himself or herself; or

› a person to whom the disponer stands *in loco parentis*.

In addition, FA 2014 introduced s82(5) CATCA 2003, which provides that full-time education includes training by any person (referred to as an "employer" in s82(6) – see following) for any trade or profession to which the child must devote the whole of his or her time for at least two years; and s82(6) CATCA 2003, which provides that Revenue may seek reasonable proof of this from the child's employer.

Guidance on Application of Amended s82(2) and s82(4) Exemptions in Making Provision for Children

In tandem with the signing into law of FA 2014 on 24 December 2014, Revenue issued eBrief No. 109/2014, referencing its "Guide to the CAT Treatment of Receipts by Children from their Parents for their Support, Maintenance or Education" ("the Guidance") and notifying of a corresponding update to Revenue's CAT Manual – Part 23.

Key points contained in the Guidance and of relevance in determining the availability of the s82(2) and s82(4) exemptions include:

› in the context of being considered to be part of the "normal expenditure of a person in the circumstances of the disponer", Revenue considers "normal" to refer to the nature of the expenditure rather than the amount, citing the example that college fees for a dependent child might be considered "normal" whereas the provision of a house would not (regardless of the fact that not all parents might incur such costs and of the financial means of those parents);

› in the context of "reasonable having regard to the financial circumstances of the disponer", Revenue considers that the use of the "reasonable" test prevents a disponer from making provision disproportionate to the disponer's means, but this test does not of itself set a ceiling on what can be provided by way of maintenance or support; and

› Revenue does not accept that provision for a child who is financially independent or gifts to a child of a capital nature[2] fall within the s82 exemption, regardless of whether such provision or gifts meet the "normal" and "reasonable" tests cited above.

The Guidance provides some examples of both "gifts" to children that do not qualify as provision of support, maintenance or education and therefore cannot avail of the s82 exemption and those that do qualify and can avail (subject to the new restrictions) as follows.

2 The Guidance explains that the FA 2014 amendments were introduced in light of identified abuse of the exemption, including large capital gifts to children being claimed as payments for support, maintenance and education.

Table 1: Exempt and non-exempt provisions under s82 from Revenue Guidance

Assets (including money, assets with resale value, and use of assets free of charge or at less than market-value charge)	Exempt under s82	Non-exempt under s82 (subject to small-gift exemption and lifetime threshold or other relief)
House purchase by parent for child (not considered "normal" expenditure of disponer regardless of financial means)		x
Free use by child of house owned by parent (but note exemption if free use provided to child attending university – see below)		x
Gift of deposit for house from parent to child		x
Gift of money from parent to child		x
Non-exclusive occupation by child of parents' family home	x	
Free use by child attending university of house owned by parent	x	
All costs of family function paid for by parent, e.g. wedding	x	
Gift, e.g. car, house or paid holiday, associated with a family function, e.g. wedding		x
Payments by parent to cover child's costs of attending college, including tuition fees, transport costs, food, clothing, rent, purchase of educational material, and pocket money	x	

Application of s82 Exemption in Making Provision for Dependent Relatives

It is worth noting that the FA 2014 amendments to s82(2) CATCA 2003 do not change the exemption for provision to a disponer's dependent relatives (as defined in s466 TCA 1997) of support or maintenance, although the Revenue guidance in relation to the "normal" and "reasonable" tests would appear to extend to any such provision.

Revenue does not include any specific information in the recently published Guidance on s82(2) CATCA 2003 relating to the type of provision for dependent relatives that might qualify for the exemption. However, currently included on the Revenue website[3] at the section entitled "Older Person" is a statement that:

> *"If you are permanently incapacitated because of physical or mental infirmity, a gift or inheritance taken by you to meet your medical expenses (including for example the cost of nursing home care) is exempt from gift or inheritance tax."*

Although the legislative provisions apply to grant this exemption are not included in this statement, it is likely that both s82(2) CATCA 2003 and also section 84 CATCA 2003 which exempts gifts or inheritances taken exclusively for the purpose of discharging the "qualifying expenses" (meaning expenses relating to medical care 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 would be relevant. The statement will be of comfort to those, for example, who had concerns after the FA 2014 amendments to s(2) that the exemption might not be available to children providing support or maintenance to their parents in their old age in the form of assistance with, or discharging in their entirety, nursing home fees.

Potential Casualties of FA 2014 Amendments to s82(2)

The narrowing of the s82 exemption in the context of parents providing support, maintenance and education to their children, although intended to deal with abuse of the exemption, may also have unintended consequences. Potential casualties of the restricted s82 exemption include children who might require annual assistance from their parents in excess of the small-gift exemption: for example, those in long-term education beyond the age of 25 years. Others include those children whose parents feel that assistance might continue to be required after their death, with such requirements not being met by the current parent-to-child CAT exemption threshold: for example, children

3 See http://www.revenue.ie/en/personal/circumstances/older-person.html.

who are not permanently incapacitated due to either mental or physical infirmity from maintaining themselves but have difficulty in doing so due to accident, illness or other issue preventing them from remaining completely independent from their parents after the age of 25 years. It is hoped that the implications of the Finance Act 2014 changes might be considered by Revenue to clarify unintended outcomes.

Read more on TaxFind *The Taxation of Gifts and Inheritances, Finance Act; 2012*; Revenue Guidance: Guide to the CAT Treatment of Receipts by Children from their Parents for their Support, Maintenance or Education; Coming soon to TaxFind *Law of CAT, Stamp Duty and LPT, Finance Act 2014*.