



# OHT Guide

## CAT Dwelling House Relief - New Regime

### Dwelling House Relief (DHR)

A CAT exemption is available under s. 86 of the Capital Acquisition Tax Consolidation Act 2003 (CATCA 03) for a disponent's family home, provided certain conditions are met.

Finance Act 2016 revised Dwelling House Relief (DHR) substantially and since 25 December 2016 the relief is largely confined to inheritances, but gifts made to dependent relatives can qualify for the relief too.

### What is a Dwelling?

A dwelling is defined as 'any building or part ... of a building, ... used or ... suitable for use as a dwelling', and includes grounds of up to 0.4047 hectares (circa one acre) occupied and enjoyed with the dwelling.

Where the property is larger than one acre the part of the garden or grounds which is most suitable for occupation or enjoyment with the dwelling will qualify for relief. A dwelling house can refer to a house or an apartment.

### Conditions for Relief

The following conditions must be met:

- (1) The dwelling house must be occupied by the disponent as his only or main residence at the date of his death (except where it passes to a dependent relative).
- (2) The beneficiary cannot be beneficially entitled to an interest in any other dwelling at the date of the inheritance.
- (3) The beneficiary must have occupied the dwelling continuously as his or her only or main

### Key Points

- *Relief is only available for inheritances, except in limited circumstances.*
- *Relief will not generally be available for gifts, or gifts which convert to inheritances due to the death of the disponent within 2 years.*
- *Dwelling house relief will be available on a gift which is made to a dependent relative.*
- *Generally, the house must be occupied by both the disponent and the beneficiary on the date of the death (does not apply for a gift or inheritance taken by a dependent relative).*
- *The age at which a beneficiary can take a property without being subject to the clawback provisions is 65.*

residence throughout the period of three years up to the date of the inheritance.

If the dwelling has been replaced during this three year period, then the beneficiary must have occupied the original dwelling and the replacement property for at least three out of the four years up to the date of the inheritance.

(4) The beneficiary must retain ownership of the property and continue to occupy it as his only or main residence for six years after the date of the inheritance, unless the beneficiary is over the age of 65 years at the date of the inheritance.

Where the donor or beneficiary has moved out of the house (prior to the benefit) because of his mental or physical infirmity, the beneficiary (or donor) will be deemed to continue to occupy the property during any such period.

## Revenue Guidance

Revenue dwelling house relief guidance is contained in Part 24 of the Revenue CAT manual. Previous Revenue guidance did not set out Revenue's interpretation of "residence" or comment on the meaning of "only or main".

The current Revenue guidance states:

*"The word "residence" is not defined and therefore has its normal meaning. This is a dwelling in which a person habitually lives and is his or her home. It follows that actual physical occupation of a dwelling house is necessary before it can be accepted that it is or was the person's residence.*

*The words "only" and "main" also have their normal meaning. Where a person owns just one residence then this is where they will habitually live as an owner occupier. Where a person has multiple residences, the "main" residence will be the one in which the person habitually lives for the majority of his or her time. Only one residence can be the only or main residence at any one time i.e. the principal private residence".*

Revenue are applying a "time test" in deciding which property should be considered a main residence and it could be argued that the test of whether a property is a main residence is more than a simple "time spent" test.

### Owning More Than One Dwelling

A beneficiary cannot have a beneficial interest in more than one dwelling house if he is to qualify for relief. A residential property that is abroad (such as a foreign holiday home), or rented (such as an investment apartment) will prevent relief applying. The beneficiary is not precluded from acquiring other dwellings after the benefit is received.

Care should be taken where a property is divided into separate parts (for example a house with a granny flat or a mews at the back). The relief on the main property will be jeopardised if the two units are not occupied as a single dwelling.

The current dwelling house relief legislation provides that it does not matter whether the second property is one which the beneficiary was entitled to before the date of the inheritance or whether the property passes by virtue of the inheritance. If the residue of an estate includes another dwelling inherited at the same time, Revenue have in the past taken the view that the beneficiary has a beneficial interest in two

dwellings at the date of inheritance and relief will not be available. However, an appeal was made to the Tax Appeals Commission (TAC) on this point and the Appeal Commissioner found in favour of the taxpayer ([10TACD2017](#)). A case was stated to the High Court and the Commissioner's decision was upheld.

The case involved a claim for the dwelling house exemption under the old legislation as the date of inheritance was prior to 25 December 2016 (when the new legislation took effect). The taxpayer inherited the family home together with an interest in four other properties. The pre Finance Act 2016 CAT legislation provided (in section 86(3)(b)) that as of the date of the inheritance the taxpayer must not be, '*beneficially entitled .... to any interest in any other dwelling-house*'. There was no requirement in the old legislation for the taxpayer to be beneficially entitled to the family home on which the exemption is being claimed on the date of the inheritance.

It was held that the inheritance of an interest in the other four properties did not mean that the appellant was, as of the date of the inheritance, '*beneficially entitled .... to any interest in any other dwelling-house*' (within the meaning of the old section 86(3)(b)), because she did not become beneficially entitled to these properties until the net estate had been ascertained.

The High Court judgement upheld the Appeal Commissioner's decision that a beneficiary's interest in the due administration of an estate is not an interest in land and is not an '*interest in any other dwelling house*' for the purposes of s. 86 (3)(b) CATCA 03.

This affects the interpretation of the current dwelling house relief legislation as there is a requirement in the new legislation that the family home is '*the only dwelling to which the successor is beneficially entitled*'. It appears from this legislation that a beneficiary needs to have a beneficial interest in the family home in order for the exemption to be available.

However, on the basis of the recent High Court judgement (*Leanne Deane V The Revenue Commissioners*), a beneficiary does not have an interest in an inherited dwelling but an interest in the due administration of the estate. Therefore, it would appear that a taxpayer cannot meet the conditions for DHR relief on a house that passes through an estate as he does not have a beneficial entitlement to the inherited family home on the date of death.

This issue should not arise where a property is gifted to a dependant relative as the beneficial interest should be taken on the date of the gift. Similarly,

benefits passing as an inheritance by operation of law are not affected as the beneficiary becomes a beneficial owner on the date of death.

If the current legislation is not changed, in the case of inheritances, only family homes passing by operation of law (e.g. survivorship or on the death of a life tenant) could technically qualify for dwelling house relief, even where there is no other residential property in the estate.

### **Clawback of Relief**

The beneficiary must continue to own and occupy the dwelling-house as his only or main residence throughout the relevant period of 6 years following the date of the benefit.

If the dwelling is sold within the 6 year period the exemption will be clawed back. However, a beneficiary can replace the property during the 6 year retention period without losing the exemption.

The original and replacement properties must be occupied as the beneficiary's only or main residence for at least six out of seven years commencing on the

date of the gift or inheritance.

The clawback condition will not apply if:

- The beneficiary was over the age of 65 years (previously 55 years) at the date of the gift or inheritance,
- The sale or disposal, or non-occupation of the house occurs because the beneficiary needs long-term medical care in a hospital or nursing home and this is certified by a registered medical practitioner, or
- The house is not occupied because an employer requires the beneficiary to live somewhere else or because he is working abroad.

A partial clawback arises where a house that qualified for DHR is sold and the beneficiary does not reinvest the entire proceeds in another dwelling.

The clawback will be based on the relief that was granted originally and in proportion to the amount of the sale proceeds that is not re-invested.

### **Gifts to Dependent Relatives**

*Dwelling house relief is available on gifts (and inheritance) of property to a dependent relative.*

*A 'relative' is a lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew of the donor or his spouse or civil partner.*

*A dependent relative is defined as an individual aged 65 years or over, or permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself. The incapacity threshold is quite high given that there is a requirement for permanent and total capacity.*

*A dependent relative who takes a gift of a dwelling house is deemed to take it as an inheritance and the condition that the house must be occupied by the donor does not apply. Prior to Finance Act 2017 this relaxation of the conditions applied to gifts only so a dependent relative who qualified for DHR on a gift would not have qualified if the benefit passed as an inheritance instead and the donor was not living in the house on the date of his death.*

*From 25 December 2017 the donor does not need to live in the house for an inheritance by a dependent relative to qualify for the relief.*

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**Caveat:** *These notes are intended as a general guide to the dwelling house CAT exemption. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances so OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*

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