



# OHT Guide

## CAT Dwelling House Relief

### Dwelling House Relief (DHR)

A CAT exemption is available under S. 86 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 03) for the receipt by a beneficiary of a family home, provided certain conditions are met.

Since 2016 the relief is largely confined to inheritances, but gifts made to dependent relatives can also qualify for the relief. Numerous changes have been made to this legislation over the last 4 years and this guide deals with the current legislation post Finance Act 2019. Therefore, this guide sets out the legislation as it applies to gifts or inheritance taken on or after 22 December 2019, when Finance Act 2019 was enacted.

### 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. A dwelling house can be a house or apartment.

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.

### Revenue Guidance on Residence

Revenue provide guidance on dwelling house relief in Part 24 of the Revenue CAT manual.

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 as his or her home. Therefore, 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*

### Summary of Finance Act 2019 Changes

Finance Act 2019 (FA19) made amendments to ensure that where more than one dwelling is inherited by a beneficiary (e.g. a family home and a holiday home) from the same disponent, relief will not be available.

The Act provides that if a beneficiary has a beneficial interest in, or beneficial entitlement to, a second dwelling (e.g. a holiday home) at the date of the inheritance, or at the valuation date of the family home benefit, then dwelling house relief will not be available.

If the beneficiary inherits a family home and a second dwelling (e.g. a holiday home) and the valuation date for the second dwelling arises after the valuation date for the family home, then a clawback of any dwelling house relief claimed on the family home would arise.

The clawback provides that CAT will be charged on the family home as if the relief was not available, and the value of the dwelling house is to be taken into account in respect of any other gift or inheritance taken (i.e. the value of the dwelling house will be treated as a prior benefit in respect of any benefits with a later valuation date).

Interest for the late payment of CAT which arises due to the clawback of dwelling house relief, following the inheritance of a second dwelling with a later valuation date, will arise from the valuation date for the second dwelling.



meaning. Where a person owns just one residence then this is where the person habitually lives as an owner-occupier. Where a person has more than one residence, 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 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.

Example 2 in the Revenue Manual sets out Revenue's view that a person who takes an extended holiday (6 months in Australia in the example) does not maintain their occupation of a dwelling as their only or main residence.

*"Emma and her brother Paul jointly inherit a house from their grandmother. They both lived in the house with their grandmother over a period of three years and three months prior to the date of the inheritance. However, while Paul lived in the house for this full period, Emma spent six months on holiday in Australia during this period. While Paul qualifies for the dwelling house exemption on his share of the house, Emma does not qualify for the exemption as she did not occupy the house as her only or main residence for a period of three years immediately prior to the date of the inheritance."*

This view is somewhat problematic, for example, if Emma had taken a two week holiday to Spain, this should not impact on her grandmother's house being her sole residence.

There is an argument that the particular fact scenario for Emma would need to be looked at in further detail. If Emma took a 6 month trip where she never took up occupation of a residence as a main residence or she was travelling as a tourist moving from location to location frequently, then one would argue her main residence is still her grandmother's house (particularly if she returns to live in the house on her return to Ireland). However, if Emma moved to a single address in Sydney and lived at that address as a main residence, then it would appear to be reasonable to take the view that Emma's main residence was not her grandmother's house during this period.



## Key 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, in which case the gift is treated as an inheritance).
2. The beneficiary must have occupied the dwelling continuously as his or her only or main residence throughout the period of three years up to the date of the inheritance. If the dwelling is replaced during the three-year period, 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.
3. The dwelling house must be the only dwelling house that the beneficiary is beneficially entitled to at the date of the inheritance and a beneficiary cannot take a further inheritance of a dwelling house from the same disponent.

Where the beneficiary or donor has moved out of the house for a period (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 that period.

Example 1 in the Revenue Manual looks at the application of the relief where the disponent has moved out of the property and into a nursing home due to ill health:

*"Theresa inherits the family home in which she has lived all her life from her father Pat. Although Pat lived in a nursing home when he died, Theresa qualifies for the dwelling house exemption because of the exception to the disponent's residence requirement in the case of ill health and the treatment of the dwelling house as Pat's principal private residence at the date of his death."*

## 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 foreign residential property (such as a holiday home abroad), or a rented property (such as an investment apartment) will prevent relief applying. The beneficiary is not precluded from acquiring other dwellings after the benefit is received, other than a dwelling taken from the same disponent by way of inheritance, which would give rise to a clawback.

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) where the separate parts may not form part of a single dwelling. The relief on the main property will be jeopardised if the two units are not occupied as a single dwelling.

Finance Act 2018 (FA18) introduced a new anti-



*exemption as he had a beneficial interest in another dwelling house at the date of the inheritance.”*

#### Example 5 – Dwelling co-owned by beneficiary

*“Carmel inherits her aunt’s home. She also co-owns another dwelling house as a joint tenant with her aunt. As survivor under this joint tenancy, Carmel acquires an immediate beneficial interest in this dwelling house on the death of her aunt. As a result, she does not qualify for the dwelling house exemption for her aunt’s home as she has an interest in another dwelling house at the date of the inheritance. The beneficial interest in both dwelling houses is acquired on the date of the inheritance.”*

#### Example 6 – Rental Property taken as part of Residue

*“Liam’s mother died in January 2020. Her Will contained a specific bequest of the family home to Liam. He also hopes to inherit a rental house as part of the residue of the estate. At the date of the inheritance, Liam does not have a beneficial interest in any dwelling house. Probate is granted on 10 March 2021 (valuation date) and the net assets of the estate are sufficient for the personal representatives to pass the beneficial interest in both houses to Liam. Because he inherits both houses from the same disponent on the valuation date for the inheritance, he is not entitled to the dwelling house exemption for the family home.”*

#### Example 8 – Another dwelling taken from same disponent

*“In June 2019 Megan’s grandfather had given her a gift of the house in which they both lived but had made the gift subject to a power of revocation. He died in March 2020 without revoking the gift. Megan, therefore, acquired the beneficial interest in the house on the death of her grandfather. She intends to continue owning and living in the house for the required 6-year post-death period and claims the dwelling house exemption. However, when administering the estate, the personal representatives discover the existence of another house in France owned by Megan’s grandfather that she will inherit under his will. As a result, the exemption for the family home will cease when she acquires the beneficial interest in this other house.”*

#### Example 9 – Another dwelling taken on death of life tenant

*“Cian (as remainderman) inherits a house, in which his father had a life interest, on the death of his father. He, therefore, acquires the beneficial interest in this house at the date of inheritance. He is due to inherit the family home in which he has lived for several years with his father under his father’s will whenever the personal representatives are in a position to distribute the assets in the estate. However, because of the interest acquired in the other dwelling house, he will not be entitled to the*

avoidance provision which deems a successor who has transferred a dwelling house into a discretionary trust, of which he is a beneficiary, to have a beneficial interest in that house on a subsequent inheritance of a further dwelling house.

The Revenue Manual includes a number of examples which detail cases where dwelling house relief would not be allowable due to an interest in another dwelling on the date of the inheritance or an interest in the dwelling inherited from the same disponent.

There is one example which looks at an inheritance from another disponent after the date of inheritance of a dwelling that qualifies for the relief and it confirms that dwelling house relief would be available.

#### Example 7 – Later Inheritance from Separate disponent

*Simon is bequeathed the family home under his father’s will. He has no beneficial interest in any other dwelling house at the date of the inheritance. Prior to the grant of probate in respect of his father’s estate, Simon inherits another dwelling house on the cessation of a life interest. The disponent in relation to this life interest is Simon’s grandfather. Simon will qualify for the dwelling house exemption on the family home as he does not have a beneficial interest in another dwelling house from the same disponent at the valuation date of the dwelling house on which the exemption may be claimed.*

This example confirms that relief will only be precluded where a beneficiary becomes beneficially entitled to an interest in a further dwelling after the date of inheritance, where that interest in a further dwelling is taken from the same disponent.

The other examples which deal with more than one property all outline a fact scenario where Revenue would disallow the relief, as follows:

#### Example 4 – Interest in holiday home held by beneficiary

*“John inherits the family home from his father. At the date of the inheritance he co-owns a holiday home with his three brothers. John does not qualify for the*



*exemption on the subsequent acquisition of the family home on the valuation date of the inheritance.”*

It may be advisable to look at the possibility of a disclaimer in a scenario where dwelling house relief would be available if it were for an inheritance of a further dwelling.

### Gifts to Dependent Relatives

Dwelling house relief is available on gifts (and inheritances) of property received by a dependent relative. A 'relative' is a lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew of the disponer, 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 disponer 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 disponer was not living in the house on the date of his death.

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

### Clawback of Relief

A new clawback provision was introduced in Finance Act 2019. If you inherit a beneficial entitlement or interest in any other dwelling from the same disponer, the dwelling house exemption will cease to apply. There is no saver in respect of this clawback and interest will be payable from the earliest valuation date for any additional dwelling taken by the beneficiary from the same disponer.

The legislation provides that a 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 he is to retain the relief.



If the dwelling is sold within the 6-year period the exemption will be clawed back. However, there is a reinvestment saver so the beneficiary can move house during the 6-year retention period without losing the exemption.

The sales proceeds of the original dwelling must be used to buy a replacement dwelling and 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, 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 the tax that must be repaid to Revenue is in proportion to the amount of the sale proceeds that are not re-invested.

© O'Hanlon Tax Limited 2020

**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. It should also be noted that the Revenue approach may change over time and that the relevant legislation may be amended.*

O'Hanlon Tax Limited  
15 Upper Ormond Quay, Dublin 7  
T: 01 6040280 E: info@ohanlontax.ie W: www.ohanlontax.ie