

OHT Guide to CAT Exemption for Medical Expenses



Section 84 Exemption

Section 84 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 03) provides that where a beneficiary takes a benefit exclusively for the purpose of discharging qualifying medical expenses of a permanently incapacitated individual, then the benefit passing is exempt from CAT.

The legislation providing for the exemption is as follows:

“Exemption relating to qualifying expenses of incapacitated persons.

84.

(1) In this section, “qualifying expenses” means expenses relating to medical care including the cost of maintenance in connection with such medical care.

(2) A gift or inheritance which is taken exclusively for the purpose of discharging qualifying expenses of an individual who is permanently incapacitated by reason of physical or mental infirmity is, to the extent that the Commissioners are satisfied that it has been or will be applied to such purpose, exempt from tax and is not taken into account in computing tax.”

Permanent Incapacity

There is a requirement that a beneficiary is “permanently incapacitated”. This test is a higher bar than some other capacity tests provided for in the tax legislation and the wording of the legislation should be carefully considered to ensure that, insofar as possible, sufficient evidence is available to show that the individual in question meets the relevant test.

Exclusivity

The benefit must be taken exclusively for the purpose of discharging qualifying expenses and this is borne out in

the following example from the Revenue CAT Manual:

“Brendan lost his leg in a motorcycle accident. His mother left him a legacy in her will to specifically support his recovery from the accident. While the majority of the benefit was spent on rehabilitation expenses such as physiotherapy, prosthesis costs and counselling, Brendan also used some of the legacy for a deposit on an apartment. The exemption applies only to the medical and related expenses.

The benefit used for the apartment deposit is a taxable inheritance and may result in a tax liability depending on any previous gifts and inheritances received by Brendan under the Group A threshold.”

A question could be raised as to whether the benefit “was taken exclusively for the purpose of discharging qualifying expenses” in the above example and whether any of the benefit should qualify for relief given the fact that some of the benefit was not used for the purpose of discharging qualifying expenses.

The Revenue Manual currently indicates that Revenue would allow relief once they are satisfied as to the disponent’s intention when providing the gift.

Intention

The legislation does not make any reference to the intention of the disponent providing the benefit but the Revenue CAT Manual has, for some time, indicated that:

“it is the intention of the disponent providing the gift or inheritance that determines the availability of the exemption. In the absence of such an intention, it is not relevant that a beneficiary might decide, after receiving a gift or inheritance, to use it to discharge medical expenses.”

A Tax Appeals Commission (TAC) case which was determined on 17 June 2019 (32TACD2019) dealt with S.84 CATCA 03 and considered whether it is the disponent’s intention or the beneficiary’s intention that



father intended, by will or otherwise, to provide the benefit of his estate exclusively for this purpose.”

The inclusion of this example appears to be somewhat at variance to the recent Determination. It may be that this update to the manual (July 2019) was in the pipeline prior to the TAC Determination (17 June 2019).

It would appear that there are a number of possible scenarios, including the following:

- Revenue do not accept the Determination and a case will be stated to the High Court.
- Revenue accept the Determination but have not, as of yet, updated the Revenue Manual to reflect this.
- The legislation will be updated in the future to tie in with the Revenue’s historic position.

determines the availability of the exemption.

The case indicated that:

“it is the intention of the recipient of a gift or inheritance in receiving that gift or inheritance, and not the intention of the donor in making the gift or inheritance, that is relevant to determining eligibility for relief from Capital Acquisitions Tax pursuant to section 84 of the Capital Acquisitions Tax Consolidation Act 2003”

The TAC Determination found that it is a beneficiary’s intention in respect of the use of the inheritance that is the deciding factor and the Appeal Commissioner tied this into the use of the word “taken” in the tax legislation, in the determination.

Revenue Manual

The Revenue approach of looking at the intention of the donor was questionable given the wording of the legislation.

The Revenue Manual was reviewed following the Determination but still sets out that

“it is the intention of the donor providing the gift or inheritance that determines the availability of the exemption”.

The only material change to the updated Revenue Manual was the inclusion of the following example:

“Eoghan was diagnosed with multiple sclerosis a number of years ago and requires ongoing medical care. His father died intestate last year and, as his sole beneficiary, Eoghan inherited the total of his father’s estate.

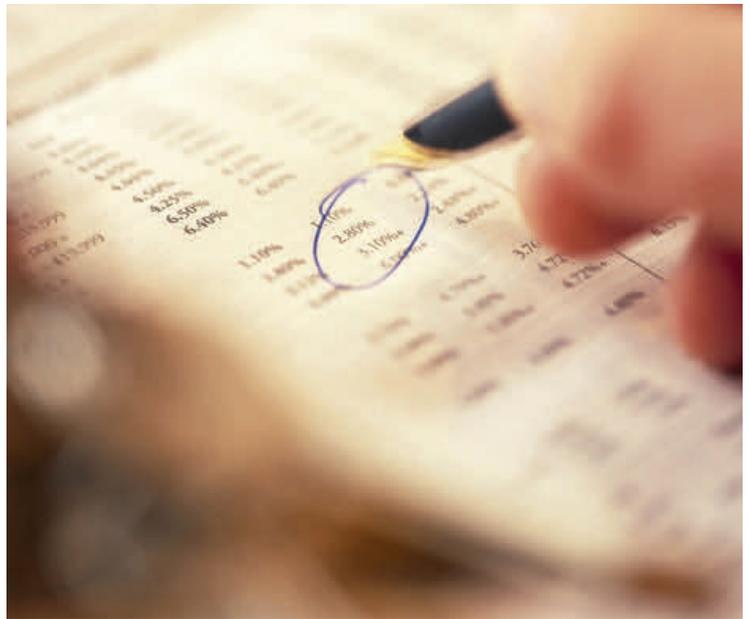
While Eoghan has used some of his inheritance to cover medical expenses and related expenses associated with his condition these will not qualify for the exemption as there is no evidence that his

As there may be updates to the legislation to tie in with the Revenue position or a case may be stated to the High Court, the TAC Determination could be displaced so it would be prudent to continue to make reference to the donor’s intention when drafting Wills, where the aim is to utilise the exemption.

Similarly if gifts are being made it would be advisable to make it clear that a donor is providing a gift to fund qualifying expenses if the relief is to be claimed.

One would expect that the position will become clearer in the months to come with Budget 2020 and Finance Bill 2019 on the horizon.

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Caveat: These notes are intended as a general guide to S.84 CATCA 03. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.